Trading in the corn pit, Chicago Board of Trade.

The trading floor of the Chicago Board of Trade.

Early in 1934, the Farmers National Grain Corporation (the government-financed cooperative marketing association of farmers) challenged Rule 313, enlisting the aid of Secretary of Agriculture Wallace and suing the CBOT. When the case finally appeared to be going against them, the CBOT membership voted to allow Farmers National and other cooperatives to be members of the Clearing House. It was a shotgun wedding, said one newspaper, "forced upon the Exchange against its will by the action of the government and a decision of the federal district Circuit Court of Appeals."

Cargill immediately petitioned the CBOT in January 1934, demanding its own membership. The CBOT directors decided to put the issue to the membership for a vote. Sayles and his friends on the Exchange lobbied hard over the next weeks. At first there seemed little opposition, but later, strong antagonistic forces began to surface. The most disturbing development came just before the vote. Now it seemed that the campaign was not being seen as a decision on all "corporations" but on Cargill itself. Sayles wired Grimes: "Certainly heard a lot of rotten talk today as to why amendment should be voted down, or rather Cargill defeated."

When the vote was tabulated on September 26, 1934, Cargill's petition had lost 412 to 202. One of the Chicago newspapers reported the next day: "The denial of clearing rights to the corporations is certain to be resented. . . . The Cargill Grain Company, Minneapolis, which has in recent years expanded operations in the Chicago market materially, is the most directly affected by the decision of the members."[2]

Bird's-eye view of the east half of the trading floor at the Chicago Board of Trade, with the corn pit at the lower left.

Another Avenue toward Membership

In early 1935, the National Recovery Administration (NRA) code provisions relating to the grain trading industry (including the grain exchanges) were due for revision (the Department of Agriculture administered these; their representatives were to conduct the hearings). One of these regulations related to membership restrictions by exchanges.

Cargill used the code hearings as a medium to bring up its own membership case. Fortuitously, Ed Grimes was a member of the Code Authority for Grain Exchanges, the hearing body, and he moved that Cargill be allowed in the Clearing House. The final vote was 4–3 in favor of Cargill's position, Grimes casting the deciding positive vote. The CBOT cried foul to Secretary Wallace about "individuals having a personal interest sitting on committees." But the Cargill lawyer pointed out that two of the three "no's" were CBOT members and would need to be excluded too. Wallace temporized, calling for further hearings, with the issue broadened to include all nonmember corporations. The CBOT officers worried privately that they unnecessarily had antagonized the Secretary.[3]

A second set of hearings was held in mid-May 1935, with wide-ranging testimony by many parties. Cargill testified, attacking the membership rule. Farmers National also made an appearance. The newspapers picked up the membership battle and featured it. The *Chicago Tribune*, in its article on May 16, 1935, headlined its story "Grain Trade Fight Begins" and discussed the "bitter struggle" that had "flared into the open" involving "a three-cornered fight" between the CBOT, Farmers National and Cargill. The Cargill 32-page brief was well reasoned and, remarkably, kept its statements temperate. But C. E. Huff, the Farmers National president, kindled the rhetoric when he called the exchanges "nothing more than social clubs or fraternities." The battle lines were clear when the CBOT attorney flatly stated that neither the Secretary of Agriculture nor any other government official had the power under the NRA Code "to take any action whatsoever regarding Rule 313." Before any final decision could be made, however, the whole issue became moot, at least in terms of the NRA Code. On May 27, 1935, the Supreme Court ruled the National Industrial Recovery Act unconstitutional in the famous case involving the Schechter Poultry Corporation (popularly called the "sick chicken" case). Cargill was back at the starting gate.[4]

Cargill earlier had developed good personal relations with influential administrators in the Federal Trade Commission, so John Jr. decided to approach the FTC about instituting an antitrust case against the CBOT because of their membership restrictions. John Jr. had to assure a worried John Sr. that by doing this "we have an excellent chance of getting in the Clearing House." The Cargill exhortations to the FTC seemed threatening

enough to the CBOT for it to act on its own about Rule 313. A significant faction among its members began to support Cargill and succeeded in bringing the issue before the entire membership for a second time. The vote itself was to take place on July 17, 1935.

As the change was opposed by another large coalition, John Jr. seriously considered an aggressive public relations campaign with the membership, lobbying for a positive vote for change, the arguments also to imply once more that Cargill was going to the FTC. But Grimes wrote John Jr.: "I do not think it is advisable to make any threats down there . . . the effect on this broker group who have apparently gone over to our side strong would have a bad effect." Grimes also alerted John Jr. about a meeting with J. M. Mehl (the assistant chief of the Grain Futures Administration). "I told him we had approached the Federal Trade. . . . While he was reserved in expressing an opinion, he seemed pleased that we were showing a little spunk and he remarked that he thought we would lick the Board of Trade before the Commission." John Jr. grudgingly agreed to the softer posture before the vote, leaving any lobbying to the already converted members. July 17 arrived, the vote was taken and Cargill's position won handily. Cargill as a corporation now could become a member of the Clearing House of the Exchange.[5]

A New Grain Futures Act

Taking a cue from the 1929 crash and its "Black Thursday," FDR apologists began to call May 27, the day the NRA was declared unconstitutional, "Black Monday." But Roosevelt returned to his irrepressible optimism. The administration entered upon another three-month whirl of legislative action, a remarkable period that came to be known as "the Second Hundred Days," also often referred to as the "little NRA." Congress passed and the President signed the National Labor Relations Act (popularized as "the Wagner Act"), the far-reaching Social Security Act, the Public Utility Holding Company Act and several other important pieces of legislation affecting banking, the coal industry and others. The Works Progress Administration (WPA, later the Works Projects Administration) came into being, as did the Rural Electrification Administration (REA), the National Youth Administration (NYA) and the Civilian Conservation Corps (CCC).

In addition, Roosevelt forced through, under vehement opposition, the Revenue Act of 1935, the so-called Wealth Tax Act. Grimes wrote John Sr. about its progress through Congress: "Roosevelt is in a vicious mood, as you have probably surmised from the dispatches coming out of Washington. He is going to try and get several radical measures through Congress."

It was at this time that Congress decided to completely revise the long-

standing legislation regulating grain trading on formal exchanges, the "second" Grain Futures Act, passed in 1922. Over its 13-year history the 1922 Act had been ineffectual in holding in check a set of very strong exchanges, 14 in number for the grain trade. The congressional legislators now decided to concentrate particularly on two objectives: (1) regulating margins on trading and segregating margin money from the rest of the commission merchants' assets and (2) limiting the total number of futures contracts that could be held by any given trader—what came to be known as the "limits" issue. Cargill, strongly believing in individual enterprise, decided to take a high profile in the congressional hearings. On April 20, 1935, Ed Grimes gave a ringing affirmation of speculation and argued that spreaders and hedgers like Cargill should not be unduly constrained by any regulation of limits. Swallowing his antipathy toward the CBOT, Grimes also praised the "record of achievement" of the exchanges: "Don't strangle [them] with unnecessary red tape."

A few days later, John Jr. reiterated the same theme in a letter to J. M. Mehl, the assistant chief of the Grain Futures Administration:

> ... the bad social effects of unrestricted speculation in commodities ... may not be nearly as serious as thought by many people. ... While we discourage participation in the market by those with an urge to speculate or gamble ... all we have done is to drive this class into economically unproductive gambling such as horse racing, the policy racket, cards, dice, etc. The tremendous prosperity of race tracks, gambling joints, etc., during the past year might conceivably be the result of the restriction of speculative facilities in securities and commodities as a result of recent legislation.

He ended on a self-righteous note: "Inasmuch as our own firm does not accept speculative business, we can speak philosophically and without bias."[6]

Henry Wallace, the Secretary of Agriculture, in his press release on a draft of the Grain Futures bill in August 1935, praised it, noting that "it would abolish the bucket shop and puts and calls and make illegal wash sales and other fictitious transactions."* Concerned about "the power of large speculators to demoralize the market," Wallace cited a particular case that "only recently came to light" where a speculator sold over 100 million bushels of wheat futures on the short side of the market "from 70 to 80 percent of the time ... by means of false reports concealing his true position on the market, he endeavored to manipulate the market for his own ends."[7]

*A bucket shop was a private "commission" house, buying and selling futures on a margin for gamblers, where there was no intention of actual future delivery and no purchase or sale on any exchange (i.e., "bucket" the transaction); puts and calls were options to sell and to buy, sometimes called indemnities or privileges; wash sales were simultaneously buying and selling a commodity, generally done to build fictitious figures in open interest. See *Report of the Federal Trade Commission on the Grain Trade*, Vol. 2 (September 15, 1920), pp. 332–33.

As the various exchanges attempted to coordinate positions on the new proposals for the federal legislation, it became clear that the CBOT was going to take an unbending, adamant position on *any* limitation of *any* kind. Once again, the Chicago exchange argued to preserve the use of "indemnities" (puts and calls) and wanted much-relaxed margin requirements on speculative accounts. The Minneapolis Chamber of Commerce and the Kansas City Board of Trade still felt that a more conciliatory approach was wiser. Ed Grimes, speaking for the former, wrote C. D. Sturtevant, one of the officers of the Chicago exchange, in late September 1935: "This market will be extremely reluctant to relax margin requirements at this time. [This] is an inopportune time to open the gate. ... Resumption in trading in privileges ... is not essential enough to warrant a defiance of Washington." Sturtevant fired back: "Chicago should be permitted to change these rules without necessarily affecting the action of the other markets. ... We should be permitted to make this experiment without interference."

Sturtevant also was chairman of the Grain Committee on National Affairs, the industry's Washington lobbying group, and a few days later he called a meeting of this organization without inviting Grimes, its Minneapolis representative. When Grimes learned of the slight, he fired back: "Do you think suppression of the Minneapolis viewpoint on important issues of this kind by the National Committee will accomplish any good purpose?" Sturtevant was unbending: "If you had been with us to express the divergent viewpoint of the Northwest markets, the entire object of the meeting would have been defeated." Sturtevant did allow that "I told the government representative that you were not in accord with our views," but he gave Grimes no specifics. Grimes demanded the right to file a minority report.

This CBOT intransigence continued through the fall and winter, and other members of the Grain Committee on National Affairs began to balk. The hostility toward the CBOT heightened in February 1936, when the CBOT made a unilateral decision on their hours of trading. John Jr. described this to his father: "Effective tomorrow Chicago goes on Eastern time. Our directors met this morning and decided that we would not change our trading time to conform with Chicago ... our opening and close both will be one hour later than Chicago. No one here really believes that we can continue permanently with different trading hours from Chicago, but it is sure to embarrass Chicago more than it does us and we are hoping that they can be persuaded to compromise. ... Winnipeg meets this afternoon and probably will follow Minneapolis' lead."

A game of wait-and-see began. John Jr. wrote John Sr. about the finale:

> Everyone is chuckling mildly over the Chicago Board of Trade having to reverse itself on the matter of hours ... there was a big game of bluff going on between

the various exchanges. [Finally] the Directors of the Chicago Board met and invoked the Emergency rule and, contrary to the vote of the membership, elected to change their hours so they would open at 10:30 Chicago time instead of 9:30, which means that the exchanges once more are all on simultaneous schedules. If Chicago had not reversed itself, Minneapolis and Winnipeg would have had to, but, as someone remarked here "This is almost the first time in history that the tail has wagged the dog."[8]

The proposed new grain futures act finally passed in June 1936, and the CEA came into being. The law represented the more cautious philosophy of the Minneapolis and Kansas City exchanges. Customer margin regulations were constrained, reporting requirements were tightened, indemnities (options) were eliminated. Additional futures exchanges came under regulation—those in cotton, rice, millfeeds, butter and eggs. The CEA's three-member final tribunal was a rather surprising combination: the secretaries of Agriculture and Commerce and the Attorney General.[9]

Both Dr. J. W. T. Duvel (as head) and J. M. Mehl (assistant) had moved over from their identical responsibilities at the Grain Futures Administration and now had to establish new regulations. Apparently John Jr. and Grimes had garnered a reputation over the previous months as "moderates" on the legislation, and Grimes wired John Jr. just after the Act's passage, "I understand Mehl and Duvel are very much worried over their new responsibilities and believe you should work with them." Once more, John Jr. had moved to exploit a personal relationship that he and Grimes had enjoyed with both Duvel and Mehl.[10]

By the early fall of 1936, many grain trade executives began advocating a new organization to replace the splintered Grain Committee on National Affairs. At first, many of the old Committee members reacted cautiously. Finally, a new organization was instituted, the National Grain Trade Council. The old Grain Committee became a "non-assessment organization," in other words, it would no longer have income. By November, the Council was in operation, with Edgar Markham as its Washington representative, and its membership included all of the previous group with the single exception of the CBOT.[11]

Cargill Fights for the Rosenbaum Terminal in Chicago

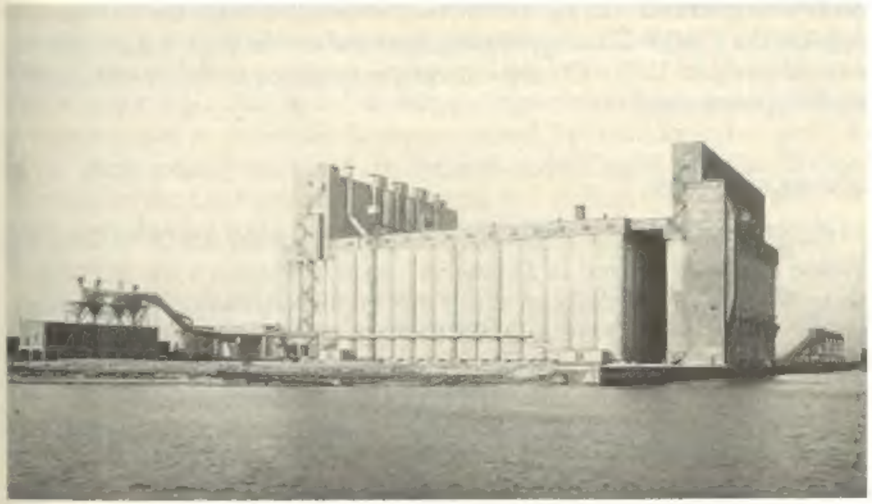
At the height of the tension about Cargill's CBOT membership, another portentous development had occurred in Chicago with the sudden announcement on April 27, 1935, that the Rosenbaum grain trading organization was bankrupt. This firm was one of the leaders in the CBOT, and there was great consternation about the effects there. Trading on the Exchange was suspended for a day just to sort out some of the early implications.

It was Cargill that alerted the business world to the impending bankruptcy. John Jr. wrote his father: "We were about to put a cargo of rye there and deliver it when I discovered this and, of course, we diverted it elsewhere, and at the same time we were compelled to report our findings to others, so that we have the whole Chicago market in an uproar and everyone greatly incensed at us for being the ones who unearthed a grave irregularity. The banks, however, I think were quite appreciative of our posting them." The messenger with bad news is seldom very popular![12]

The prize in the bankruptcy was control of the huge Rosenbaum terminal. Terminal space was desperately short in Chicago at that time. The Rosenbaum terminal, by its sheer size (9,500,000 bushels), was a linchpin. The terminal was leased from its owner, the Chicago and North Western Railroad (C&NW); now several eager competitors battled to persuade the C&NW to lease to them.

John Jr. desperately wanted it, for it would not only give Cargill major new space in a fundamentally important market but also serve as a further lever in the CBOT on the Clearing House matter. Fred Sargent, the president of the C&NW, had known the MacMillans since the early 1920s, when Cargill leased the former Taylor & Bournique terminal owned by the railroad at Milwaukee. Just the previous year, Sargent had invited John Jr. to join the C&NW board. John Jr. had declined but did accept in 1937, only to resign abruptly several years later, when he felt his advice was being ignored.

Any lease would have to satisfy the creditors, too, as well as the bank-



The Rosenbaum terminal in Chicago, leased by Cargill in 1935.

ruptcy courts. The situation invited behind-the-scenes maneuvering, and Cargill soon learned that Farmers National, the Norris Grain Company and the Continental Grain Company all were avidly pursuing the terminal. John Jr., suspicious of the others, wrote Grimes on June 4 that he thought a bondholders group that had been formed was "acting as a dummy for Continental or Farmers National." Grimes suspected a plot against Cargill: "Someone evidently is working hard on the C&NW in an effort to prevent the road leasing the plant to us. . . . There is certainly something going on behind the scenes."

Finally, the convoluted negotiations shifted to the bankruptcy court in Chicago. Federal Judge William H. Holly would have to accept any final plan. John Jr. made three separate "final offers" but reported to his brother Cargill that "every time on one pretext or the other, the Judge has continued the hearing to a later date." Judge Holly's reluctance stemmed from strong stockholder disagreement about the size of the Cargill offer. "Finally on Monday July 22nd I felt it advisable for me to go down and tell the court that they had to fish or cut bait," John Jr. recounted, and "the Judge signed the order to accept our proposition."

Cargill agreed to pay a lump sum of $70,000 for immediate possession, at the same time allowing an arbitrator to set a price on Cargill purchase of the 2,500,000 bushels of grain, mostly rye, that still remained in the elevator. Grimes reported the decision: "We . . . were soaked 4½ over September for the 2 million rye. We are not very happy about it except to say that it was a fair arbitration." Still, this was minor, for Cargill had consummated a major boost to its total elevator capacity (particularly after a number of improvements were made by Milt Bondus, later a senior executive in terminal management). In combination with the Company's role on the CBOT Clearing House, the new terminal gave a greatly enhanced position in the Chicago market, reflecting the reality of Cargill's trading power there.[13]

Making an Enemy

Cargill's first year as a full-fledged member of the CBOT's Clearing House had been marred in December 1935 by a dispute with the Illinois State Warehouse Commission about the "public warehouse" responsibilities of Cargill at its newly acquired Chicago terminal. The Company had delivered some wheat as "#2 Red," but a state inspector had rejected this, and the wheat had to be unloaded back into the warehouse, remixed, regraded and reloaded out once again. Cargill officials, still suspicious about Exchange members' attitudes toward them, felt that some were still opposing them behind the scenes and had put the Warehouse Commission up to the stricter posture. Because all of this took considerable time, deliveries to be made were significantly delayed, antagonizing some of the holders of the warehouse receipts on Cargill "public warehouse" grain. Two of these were Daniel F. Rice, the principal of the firm bearing his name and a CBOT member since 1920, and the Farmers National Grain Corporation.

Cargill had had several dealings with Rice, beginning in 1931. Rice had executed trades for Cargill in Winnipeg, and Cargill did the same for Rice in Minneapolis, both at members' commission rates ("reciprocals" had been widely practiced in the industry for many years). Now, protesting that his deliveries were delayed and that Cargill had deliberately put some extra-hard Canadian "garnet" wheat in the shipment, Rice took his case to the CBOT. The two parties finally settled privately, but both Rice and Cargill executives remained annoyed and mistrusting.[14]

The September 1936 Corn Contract—Harbinger of Trouble?

Daniel MacMillan had thoroughly surveyed the corn crop in July 1936 to anticipate supply over the following months. The results had been revealing. With another burgeoning drought in the summer, assessments of the "visible supply" pointed to a markedly low total for the crop, the third year in a row for wheat and corn. The existing international situation also had an impact. Revolution in Spain had broken out in mid-July; General Franco now received important economic and military aid from Nazi Germany and Fascist Italy, and the left-wing Loyalists were aided by Soviet Russia. Nationalistic concerns for controlling food supply arose worldwide.[15]

In anticipation of this, Cargill began buying large quantities of domestic cash corn and also placing substantial orders to Argentina for shipment of its corn crop, already in hand there. By this time, the Company was a major force in American agriculture. Company lawyers in later briefs estimated that in 1936 Cargill distributed in volume approximately 2 percent of all of the grain raised by American farmers—indeed, between 10 and 12 percent of the grain actually marketed. In the mid-1930s, Cargill was distributing throughout the United States and abroad 100 million bushels or more of grain annually and had actually handled as much as 150 million bushels in one year.

The logistics of those Argentine purchases complicated the matter significantly. The elapsed time between time of charter and time of arrival, according to a later Cargill legal brief, was substantial: 35 days alone for the trip from Argentina to United States ports, an additional 10 days to Chicago. This time lag seemed to make it more urgent that the Company make heavy purchases of September corn futures. By August 12, some 4,200,000 bushels had been acquired.

This long position was substantial enough to catch the attention of a

group within the CBOT with which Cargill had had no previous direct dealings—its Business Conduct Committee. This was the group within the Exchange committee structure given the task of being the "policeman" for member firms. Its powers were wide; it could recommend to the board of directors severe discipline for a member, including as a last resort actual expulsion. By this time, Cargill's interest represented approximately 50 percent of the total open interest in the contract, so the chief accountant of the Committee queried John Jr. on August 11, 1936: "[Is] your position . . . hedging or [is] part of it of a speculative nature?" John Jr. replied with uncharacteristic diplomacy, "It is really very reassuring to us to know that your Committee is on the job," then pointed out that Cargill's short position was just about exactly what the Company's books showed as "open sales."

By the end of August, the Company began to exchange a portion of its September futures for cash corn and transferred some of its September futures forward to Chicago December corn futures. Nevertheless, it still held substantial amounts of September futures, for which the Company planned to "stand for delivery" (to use the futures contract at expiration to obtain actual physical grain by delivery).

On several occasions during September, Cargill was summoned before the Committee, where its members expressed increasing concern that Cargill's holdings of September corn were speculative. They urged liquidation of part of the line, even if it was necessary for Cargill to make some sacrifices—to be willing to forgo profit-taking that might stem from a price rise in the contract due to a shortage of actual corn for delivery. Finally, on September 25, John Jr. met personally with the Committee and (as recounted by the Committee secretary) "repeated statements which he had made over the telephone to the effect that Cargill's long position . . . would not be allowed to cause any unreasonable fluctuations . . . that Cargill would have corn for sale at prices within the maximum range." This mild statement by John Jr. apparently mollified the Business Conduct Committee. Cargill subsequently liquidated enough of its holdings not to upset the market, and prices on the contract held quite steady through the expiration date at the end of the month (futures contracts then expired later in the month than at present).

There remained one nagging doubt for Cargill. This related to an action by the board of directors of the Exchange on September 29. The new Commodity Exchange Act provisions were to come into effect on September 13, 1936. September futures contracts around the country would be the first to be governed by that Act. One of the features of the Act required that any person making delivery of any commodity be obligated to give a one-day written notice of the date of delivery, at least one business day prior to such day of delivery. At the expiration of a contract, this introduced a certain amount of rigidity for the "short" who was going to deliver.

This worried many Exchange officers, so the board held a special meeting on September 29, at which time delivery on a less rigid schedule (in other words, less notice to the "long") was allowed. Cargill, as the principal long in the September corn contract, was most affected by this last-minute change; John Jr., quite surprised, wired the secretary of the Exchange of Cargill's displeasure, alleging that they had lost money—cash corn had dropped on the last day, with missed opportunities for profit-taking. Further, the shorts had been able to obtain enough cash corn to meet their obligations, whereas Cargill purchases might have made some of the shorts default, at which point Cargill would be in a bargaining position to accept a more favorable settlement. No response came from the Exchange officers.[16]

The issue troubled John Jr. enough to send a detailed, four-page letter to Dr. J. W. T. Duvel, the head of the CEA. He poured forth a litany of complaints against the Exchange: "We are the largest buyers of cash grain in the market, the largest sellers of cash grain in the market, do the largest warehousing in the market, and are also the largest users of futures, yet we are not represented on any one of the three most important Board of Trade governing bodies, namely the Directorate, the Board of Governors of the Clearing House or the Business Conduct Committee . . . we feel compelled to resist with every means at our disposal any invasion of our rights by this body, however slight."

John Jr. ended with a ringing disavowal of any speculative intent by Cargill:

> Lest the suspicion may arise that our trades were speculative, let me state that there has been no departure from the established policy of the firm, namely, that our net long and short position must be as nearly even as is practicable. I have been in the business approximately 17 years, and although our inventory each year reaches a peak of somewhere between 40 and 50 million bushels of grain, yet at no time during these 17 years have we ever been more than 2 million bushels out of balance, and then only for brief periods when we were engaged in handling some commodity where special conditions made it impracticable to secure a safe hedge, and for which we knew from contact with our usual trade that there were ready buyers at a relatively small sacrifice in price.

His closing sentence was confrontational: "If the futures trading facilities of the Chicago Board of Trade are not intended to serve such situations as we had ourselves during the past three months, then we can see little or no economic justification for their continued existence." It was probably too much to expect the cumulative hostilities of many years on the part of John Jr., his father, and others at Cargill to have dissipated with the grudging acceptance of Cargill into the Clearing House of the CBOT.

To complicate matters just at this time, there was another skirmish with Dan Rice. Argentine corn had been imported by Cargill and others over the early fall of 1936; this was mainly flint corn, harder than the usual domestic dent (dent commanded a premium over flint, for the flint required special processing). Federal regulations allowed only 5 percent flint when the two were mixed; now the CBOT advocated that the Commodity Exchange Authority allow 25 percent flint for fulfilling the December, 1936, corn contract. Rice objected vociferously, and urged the CEA to make it "obligatory that native Corn be delivered on contract." Rice lost this argument—the 25 percent figure was adopted—and, with much of his corn coming from Cargill, this increased his antipathy toward the Company.[17]

Double Jeopardy—December Wheat, December Corn

As the next set of corn contracts approached their closing dates, at the end of December 1936, there was another major hassle, with Cargill on one side and the Business Conduct Committee of the CBOT (and many of its individual members) on the other. One could see the problem coming. The United States corn crop for the crop year 1936–1937 totaled just over 1.5 billion bushels, one of the shortest crops on record. Only some 1.25 billion bushels of this were harvested as grain. On October 1, 1936, the visible supply of corn for the country was just 3,773,000 bushels, as compared with the average over the previous 10 years on the same date: 18,754,300 bushels.

Meanwhile, Cargill had estimated, from information received from its customers, that orders in the neighborhood of 15 million bushels and possibly as much as 25 million would be required by them. Anticipating this, Cargill became an increasingly aggressive purchaser of cash corn; by December 26 the Company had acquired 5,955,000 bushels. Foreign cash corn also had been purchased, mostly from Argentina. In total, Cargill held 14,128,895 bushels of foreign corn. In addition, before the close of the September contract, Cargill had sold September corn futures and bought December corn futures (at that time a cheaper source of supply) amounting to some 2.5 million additional bushels by October 1. Further purchases of December futures were made all through the fall, and Cargill's percentage of the total open interest in the contract rose steadily. Even though Cargill began to liquidate some of its contracts by December 1, this liquidation was not as rapid as the drop in the total open interest. Cargill's percentage continued to rise, from 27.3 percent on November 2 to 52.8 percent on December 14.

Cargill also purchased December 1936 wheat futures in volume. Supplies of wheat always are more difficult to ascertain, inasmuch as demand for the various varieties interact in often complex ways. In the late summer of 1936, Cargill executives decided that there would be a shortage of soft red winter wheat (traded on the CBOT), even though the total production of this variety was actually up from the previous year and well above the 10-year average. Their reasoning for this gives an excellent example of the subtlies of grain supply prediction: "moderate production of Hard Winter Wheat, complete failure of the Durum Wheat crop, the existence of import regulations, a small crop of wheat in Canada of high quality, which will tend to make importation of lightweight Canadian wheat for feeding purposes impracticable, and the scarcity and high price of corn [will bring] a distinct shortage of Red Winter Wheat . . . within a few months, although this development is not yet generally recognized as probable by the trade." Cargill began buying some cash wheat but particularly purchased December wheat futures. Again a similar pattern of dominance of the open interest ensued. The Company's percentage of open interest, only 15.5 percent on November 2, had risen to 57.2 percent by December 15.

The combination of Cargill's two long positions now raised a further complication. Most of the trade recognized that Cargill used long positions in futures markets for actual delivery, and the Company had formally notified the Business Conduct Committee of the CBOT of this intent. Now the question became, if all of this grain was to physically arrive at the Chicago markets in fulfillment of Cargill's long positions, was there enough warehouse space to take care of it? Only a percentage of the warehouses in Chicago were classified by the CBOT as "regular" for delivery, fulfilling Exchange regulations that allowed warehouse receipts. The total deliverable elevator capacity in Chicago was just over 16 million bushels out of a total of over 55 million bushels of total capacity. Cargill argued that the CBOT could have made these nondeliverable warehouses "regular," but the CEA replied that most of them were private houses owned by processors, most were not on water (which was an essential for "regular" delivery purposes), and furthermore, the CEA could not force any given warehouse to go through the extensive procedures to become "regular."

Cargill then argued that, inasmuch as the CBOT regulations stated that physical deliveries could be made in the last three days of a delivery month "on track," much of their "long" purchases could be handled this way. An expert witness at one of the later CEA hearings had testified that he had never heard of track deliveries as large as 7 million bushels, although other evidence did point to an occasional exception. It was true that a day's total inbound freight in Chicago was some 75,000 rail cars, but this included cars for all purposes, not just track deliveries of grain. The CEA pointed out, additionally, that track deliveries would have to be inspected

and that in this particular month, December 1936 the corn was of such high moisture content that it could not be delivered officially without being dried, a process that had to be done within the elevator as such. The sum of this was that physical delivery of the two grains in Chicago to fulfill the delivery provisions of the December 1936 contract was going to cause a formidable problem.

On November 4, 1936, the Business Conduct Committee deputed the CBOT chief auditor to make a special trip to Minneapolis to ascertain from Cargill's records just what Cargill's positions really were. On November 23, the auditor reported more intransigence on the part of Cargill. The Company intended to take delivery on much of its longs, and John Jr. "declined to state at just what price the December corn futures would be liquidated." Further, "in MacMillan's opinion, the recent price advance was due to the activities of the Business Conduct Committee."

A few days later, on November 30, John Jr. and Grimes were asked to appear personally before the Committee. They told the members that "just a modest price advance" would cause Cargill to sell but that since Cargill "did not know where the corn was coming from to meet our requirements, we decided to buy futures and let someone else worry where it was coming from." Nevertheless, John Jr.'s tone, as in September, remained conciliatory, and he ended: "We assure you there will be no manipulation. We would never do anything . . . contrary to the best interests of the grain trade. You can count on our complete cooperation at all times."

On December 7, the Committee found that Cargill's position still had not much changed, and at this point it took a decisive step. Invoking a formal order against Cargill, it found that "your conduct in accumulating and maintaining these lines under prevailing conditions is detrimental to the best interests of the association; that it is unfair and unjust." In essence, they accused Cargill of holding a disguised speculative position. Cargill was directed to cease and desist from its existing position and within seven calendar days to reduce its position in both grains to 60 percent of where it had been; three days later, this was tempered by the Committee to 70 percent.

Cargill's executives were outraged by this, and on December 12 they forwarded a long, highly formal letter to the Business Conduct Committee, taking issue with its findings and flatly refusing to liquidate the Company's long positions in the percentages required by the Committee. Cargill now decided to take a different tack, urging the Committee join with it in requesting J. W. T. Duvel, the chief of the CEA, to "arbitrate the differences between us and to determine what action, if any, is required on our part" John Jr. had wired his father, on December 10, that "Dr. Duvel assured us just now by phone that we had his moral support." The Business Conduct Committee turned aside this suggestion and continued its exhortations to Cargill to reduce its positions in both grains.

By this time, the public press had picked up the events. The *Chicago Tribune* wrote, on December 19: "While it has been known for some time that a tense situation might develop, the Committee's action served to emphasize the gravity of the market's condition. Never in past history of the Exchange has a similar warning been given."

The question of price was critical to any solution, Cargill at this point intimating to the Committee that it would be "a willing seller when the price of the Chicago December wheat futures reached a 9¢ premium over the price of wheat in the Southwest." The situation now seemed to ease, the Committee apparently concluding that the wheat situation would resolve itself and that "the Committee need not have further concern over December wheat futures." Corn prices, surprisingly, had stayed quite steady during December. Both the wheat contract and the corn contract now proceeded to expire without too much tension.

Although the situation seemed resolved, Cargill officials remained highly incensed. While they took issue with many of the actions of both the Business Conduct Committee and the Commodity Exchange Authority, there were two overriding irritants. First, the widely reported pressures on Cargill to reduce its positions had succeeded in artificially holding the price down for the two grains, and, second, the shorts were allowed in the process to wriggle out of delivering actual product. A Cargill memorandum reiterated earlier charges that "the Order obviously tended to encourage the tendency of the Board of Trade officials to permit speculative 'shorts' to operate without taking conscientious steps to fulfill their obligations. . . . It even encourages outright gambling by speculative 'shorts' who in many instances . . . have no real intent to deliver."

This same brief frankly stated that Cargill obeyed the order only because it feared it would lose its membership in the CBOT if it did not comply; and if this happened, it "would be forced to pay full commissions on all 'futures' transactions there (double the members' rates), as well as exorbitant brokerage on all cash grain transactions which would be made on the floor of the Exchange." Cargill felt that it had been cheated out of its full share of profits, "some 15¢ per bushel less than the factors of supply and demand warrant." If the Business Conduct Committee had not intervened, the December corn contract would have risen, in Cargill's words, "to the proper level and would have carried with it the price of real corn." Cargill was being penalized, its executives felt, because it had had the foresight to anticipate the direction of prices.

Beyond this, there was still a further grievance—some individual members of the Business Conduct Committee had actually themselves been

shorts, and Cargill officials believed that several had personally profited in their short selling due to insider knowledge as members of the Committee. The Company's outrage had been so strong that John Jr. had even wired his father on December 11: "We should all consider advisability of withdrawing from Board of Trade after this is all over."

The CEA's own viewpoint on these Cargill allegations was not clear at this time. Cargill gained an inkling of the CEA attitude toward it in the annual report for 1937 by Dr. Duvel, the head of the CEA, who said that "one firm had an *excessively* large position in both wheat and corn" (my emphasis). In later CEA cases involving Cargill, the CEA rejected almost all of Cargill's 1936 accusations, including that of personal profiteering by members of the Business Conduct Committee (the CEA held that neither the members themselves, nor "the wives and children of the members nor even the partners had any position as such").

So Cargill came through those December 1936 incidents not only with renewed hostility toward the CBOT but also increased concern about the Commodity Exchange Authority, which seemed markedly more skeptical of Cargill actions—and Cargill motives—than the Company had ever believed. Somehow, Cargill earlier had felt that the CEA was "on their side." Given the CEA's necessary role as the adjudicator for any industry altercation, this was too naive an expectation.[18]

Cargill MacMillan's Decisions

The Board of Trade elections for director posts, held in the first week in January 1937, served to remind Cargill that its role in the CBOT was still precarious. Philip Sayles had been nominated as Cargill's candidate for a directorship. There were 12 candidates for the five board posts, and the lobbying was intense; Sayles wired Grimes: "Conditions looking better every minute unless all my friends are wearing Landon buttons."

His optimism was misplaced—he lost, and he wired Grimes about how "the machine worked to elect their crowd . . . directors are card and pencil men, and men representing big investments and those responsible for bulk of business were defeated." To add to Cargill's frustration, when the committee assignments for 1937 were announced by the new president (Kenneth S. Templeton), there was no Cargill representative on any of the 21 separate committees (in a later CEA case, the Exchange explained this away by the fact that Cargill's headquarters was out of town and said that the CEA agreed that this was "explicable").[19]

John Jr. had gone off on vacation in early January, 1937, leaving instructions that he wanted the Company to build itself into a position where it was short 10 million bushels in oats, using this as a hedge against long

positions in barley and Argentine corn (an oats/corn hedge was generally considered logical; a barley/corn hedge was thought to be a speculative cross-hedge). John Sr. was also out of the office, and decisions on how to effect these hedges were left with the traders under Julius Hendel, with overall supervision in the hands of Cargill MacMillan. Ed Grimes decided to write J. W. T. Duvel at the CEA, elaborating the Company's futures strategy. Duvel responded, on January 19: "It seems rather an unusual hedge, but until such time as some limits are fixed on different classes of operations I see no reason why you should not place your hedge in that way if you care to do so." Then Duvel added a caution: "Of course if it should subsequently develop that your large short holdings in oats were handled in such a way as to seriously affect the oats market, it might be necessary for us to take some different view. . . . Your short position in May oats . . . represents approximately 35 percent of the total contracts. . . . This could easily develop into a situation which might be an undue burden on interstate commerce."

The Duvel warning gave Cargill MacMillan pause, and he wrote his father, "The boys here are frankly worried over our oats position. . . . Even Julius has furrows in his brow." Cargill also sent a copy to John Jr., apprehensive about his brother's response: "I rather expected contradictory replies and the problem of how to please you both had not at that time occurred to me." In the absence of his older brother and father, Cargill now himself made the decision to cut back on selling oats futures. "I think this is the sanest thing to do for, after all, you would not leave me here unless you had some confidence in my judgment, and my own judgment is to do just what we are doing."[20]

The total of these hedges and the other trading in the month of January 1937 resulted in a surprising $300,000 loss for the month, and Cargill MacMillan once more reported to his brother: "I went through the usual routine, had the boys in on the carpet and tried to imitate father's best manner. . . . The boys say they realized, but I think they only realized theoretically, what inverse carrying charges do to one. . . . These revelations . . . take the gimp right out of the organization."[21] Cargill MacMillan was coming into his own as another Company fiscal watchdog (along with John Peterson)—and as a leaven on his brother's expansionist, often "bull-ahead" philosophy.

Further Dan Rice Irritations—in Both Directions

In May 1937, Cargill once more had difficulties in meeting grading requirements and being prompt in loading May oats out of the Chicago warehouse. The person on the other end of this transaction was, again,

Dan Rice. He alleged that Cargill was taking care of itself first—there were 7.8 million bushels in Cargill's "public warehouse" section (including 2,308,000 bushels of Dan Rice oats), but Cargill had appropriated Rice-ordered railroad cars (there was a boxcar shortage) and shipped its own oats out of the remaining "private" section of the warehouse. "Cargill could promote and protect the merchandising of its own oats," Rice complained, "by delaying the shipping out . . . of our oats."

Rice immediately complained to the CBOT and also to the Illinois State Warehouse Commission. He got his oats but then contested Cargill's elevation and storage charges and refused to pay some $14,751. Cargill countered by bringing its own formal charge before the CBOT on July 20, 1937. A week later, Cargill withdrew the complaint; Rice had contacted the Company, expressing a desire to settle it directly as a "private business controversy" (Cargill's words). But the mutual mistrust that had developed between Rice and Cargill remained.

Earlier that spring, John Jr. had made a trip to Washington, where he had had an hourlong session with Dr. Duvel at the CEA offices. He wrote John Sr.: "Dr. Duvel . . . felt that our position on May futures was entirely correct and he spoke in very condemnatory terms of the speculative commitments in May." Once again, John Jr. seemed heartened by what he perceived as CEA support, especially welcome in relation to Dan Rice.

Nevertheless, John Jr. felt that rumormongers were running Cargill down. In early May, he wrote directly to Kenneth S. Templeton, the CBOT president, denying whisperings that Cargill was delivering wheat "of such inferior quality that the grading under the Federal standards is in doubt." He defended the quality Cargill was delivering from its Chicago terminal and bluntly stated: "There has been no mixing or degradation of this grain since it has been loaded into our house." The letter did not ask for any action by Templeton, nor was any taken.[22]

It was clear, however, that by this time John Jr.'s fuse was getting shorter. Worse was to come.

Summer 1937: Cargill Assesses Corn Supply

The corn crop for the year 1936–1937 was the second smallest on record; only the Dust Bowl year 1934–1935 had been smaller. Inasmuch as the intervening year was only average, the actual stocks of corn on farms, as of July 1, 1937, were the lowest ever recorded. The total United States visible supply of corn as of that date was just over 5.3 million bushels; the average for the same date for the years 1932–1936 was almost 22.5 million bushels. Even the availability of the corn on farms was questionable; the 1936–1937 crop was of lower merchantable quality than usual, and the best of this had to be kept for seed corn. Already, corn prices in the spring of 1937 had

been high (up to $1.40 per bushel in May), and most surplus corn had been attracted into the markets.[23]

By early summer, Cargill had assumed extensive long positions, at first in July futures but then, in the second half of June, shifted to the September contract. The July price had advanced to a point where it had been advisable to take a profit on these contracts and replace them with the cheaper September contracts. This strategy continued until, by July 30, some 8,075,000 bushels of long September corn futures had been accumulated.

In late May, Julius Hendel had received a wire from Chicago that Daniel F. Rice "is selling Sept. wheat and doesn't expect to cover it for years and make the carrying charge." By about August 1, Company officials, listening to gossip in the CBOT pits, thought they began to detect concerted efforts to drive prices lower on the September corn contract—that there was an incipient "bear" raid on corn. Further, the Chicago Cargill traders thought they knew who the key shorts were—once again Cargill's old protagonists, Daniel F. Rice and the Farmers National Grain Corporation.

During the period between August 1 and September 4, according to later Cargill testimony, three separate price rallies in September corn had been checked, either by trade rumors or newspaper stories: "We believe some of these are pure propaganda, emanating from persons interested in beating down the price of corn." First, on August 4, Cargill heard rumors that Rice planned to bring in 3 million to 4 million bushels of Texas corn, yet Cargill's field sources in Texas remonstrated that the corn supply there was in quite short supply. Another rally in prices, later in the month of August, also seemed forestalled (in Cargill eyes) by a news article syndicated in the *Associated Press* that talked of "burdensome deliveries" and suggested that "with no aggressive buying demands in evidence, the markets were bowled over in rapid succession, with but little rallying power manifest."[24]

Cargill alleged that this story had been planted by the shorts as a "clever, though unscrupulous" maneuver. Later, in one of the ensuing CEA cases, the Company amassed a whole set of wires sent at this time by Cargill's Chicago office to the Minneapolis headquarters, some 920 in all, that seemed to document at least Cargill's view of a conspiracy. Here are the most telling of the wires:

August 4, 1937: "Understand Rice, Hollman big shorts Sept Corn. They remarked could bring in 3 to 4 million Texas YC [yellow corn] to deliver in Sept."

August 10, 1937: "Bache selling CU [September corn]. Rice offering it all the way down."

August 11, 1937: "Rice is in Pit waving arms and selling CU. Putting on a show."

August 12, 1937: "Rice forcing the Sep. Corn down. Offered 200 at 93¾ when market was 99¼."

August 12, 1937: "Here is a funny one. The short Corn fellow [Dan Rice] say

Cargill long Sep Corn and he will give them a belly full this time and break them How's that?"

August 19, 1937: "Rice and his crowd seem to be offering CU Looks like a show as not selling much but sure making lots noise "

August 20, 1937 "I have a good hunch Uhlmann corn broker is buying CU for Rice as a friend told me he was giving Rice's clerk several trades "

August 30, 1937. "Rice just went in corn pit after long conversation with Farmers Natl "

In one of the subsequent CEA cases, a CBOT member (serving on a subcommittee of the CBOT's Business Conduct Committee, called the McDonald Committee, set up to investigate Cargill's role in this September 1937 corn contract) stated: "These messages show absolutely no evidence of bear raids . . . they are silly, unfounded and unreliable, and just idle gossip and rumor." In truth, when the McDonald Committee had taken its testimony, several of the interviewed floor traders also confirmed that something different from usual had been happening on the shorts' side Albert E. Williams, who traded for his own account, when queried about the shorts, replied, "Well, I saw quite a few people who were supposed to be bearish . . . force the market down severely . . I have seen the local boys going to the market and offering it down." When asked about Rice's activities, he responded, "I'm not saying that the man hasn't any right to sell the corn at any price he likes, but that was an unusual situation."

Alex Moore, a cash grain trader for John E Bastien Grain Co , was an even more reluctant witness. Asked about the Rice activities he answered, "I refuse to answer that or rather I prefer not to answer." But he was willing to talk about raids in general. "They would offer 100 or 200 thousand at probably a quarter of a cent below the market," and when he was asked, "As a rule isn't there sufficient buying to correct that condition?," he replied, "Those offerings should never be made in that manner " Asked if he would testify that there were such raids, he replied, "I am a cash man and I would rather have you get that testimony from men in the pit."

Moore was pressed about what he did observe with the September corn contract; he reiterated his belief that the shorts "should not have offered that way" and continued: "These gentlemen are pit traders. They know if they are fulfilling an order they don't go in and offer a large quantity below the market. . . I would say from the method used and the individual using it that it resembled more of a raid than an attempt to get a quantity of corn off at reasonably near the market." Moore's concluding words emphasized just how hard it was to determine exactly what was going on in the pit in a rapidly moving market situation: "It is difficult to explain what a raid might be unless you are suspicious that people are trying unduly to affect the market."

Harold E. Spinney, a floor trader for Lamson Bros. & Co., when asked about Rice, said: "It wasn't necessarily raiding if the broker offers the market down a bit." He corrected himself: "I really shouldn't use that term. . . . I had better say they offered it down." The Committee, too, vocally expressed unease about the term "raid." Chairman McDonald commented after the Spinney testimony, "It's a vicious term . if it is a term that was coined by the trade we as members [should try] to eliminate it . when it gets into testimony, it sounds like the devil "[25]

Two Ambiguous Contracts

John Jr. and his colleagues were, naturally, not privy to this later testimony at the time the shorts allegedly were carrying out their effort. Given Cargill's tenuous relations with the CBOT officialdom, few traders would likely have been willing to testify at the time for Cargill. Sometime in early August, having convinced themselves that a bear raid was in progress and acting on their information, Cargill officers made a fateful decision, one that later was to haunt them. With the Company's long position in September corn now over 8 million bushels, and remembering that large reported positions that seemed to dominate markets had caused Cargill trouble in two previous corn contracts in 1936, the Company decided to reduce this reported amount drastically. The operational word here is "reported," for Cargill was able to persuade two other grain companies (neither of which knew that the other was involved) to assume a great bulk of Cargill's long positions. Beginning on August 13, Cargill sold some 3,460,000 bushels of September corn futures to Continental Grain Company, the transactions completed by August 31; in approximately the same period, Cargill sold 3,675,000 bushels to the Uhlmann Grain Company.

In turn, Cargill drew a contract with each to sell back to Cargill equal amounts of cash corn at the end of September or in early October, at the seller's option Neither Continental nor Uhlmann bought any cash corn to cover this; they planned to use the physical deliveries at the termination of the September contract to fulfill Cargill's requirements For this effort by the two companies, Cargill promised to pay each a quarter of a cent per bushel for being the "temporary holders." Cargill's reported net long position in the September contract now dropped dramatically, from 8,745,000 bushels on August 13 to 2,237,000 on August 31, 1937. Julius Hendel was the effector of these contracts, under the direction of John Jr. and Ed Grimes [26]

John Jr. had some unease about the plan, and he and Grimes made a special trip to Washington on August 11, two days before the actual buying was to begin, to talk with Dr. Duvel at the CEA. The exact events of that meeting were later subject to much argument among Cargill, the CEA and the Business Conduct Committee of the CBOT. According to Cargill

notes on this meeting, John Jr. and Grimes first elaborated on the tight market situation in corn and explained why Cargill had accumulated its "long" line. They told Duvel and his assistant, J. M. Mehl, who also attended, about Cargill's concern that a "bear" raid was underway. John Jr. then reminded the two CEA officials of the Business Conduct Committee's earlier decision to press Cargill to sell large quantities of the December 1936 corn and wheat futures at prices detrimental to the Company and said that they feared the same treatment once again.

At this point in the meeting, John Jr. and Grimes described to Duvel and Mehl the Cargill plan to convert much of Cargill's long futures into cash purchases. However, they did not mention specifics and left the impression that Cargill was going to enter into contracts with grain merchants who, at the time of contracting, had on hand the actual cash corn, without relying upon futures transferred to them by Cargill as sources of this actual corn. The Cargill memorandum reporting on the meeting stated that both Duvel and Mehl then said they saw nothing wrong with the procedure. Cargill, however, at no time claimed explicitly that John Jr. and Grimes had actually mentioned the Uhlmann and Continental contracts. Cargill left the meeting with Duvel and Mehl, as Grimes put it in a Cargill memorandum, "with the impression that our operations to date and our contemplated operations of standing pat on our September position have their blessing and approval."

The Business Conduct Committee Acts

Whatever the perceptions of the parties to the August 11 meeting in Washington, it is clear that the Uhlmann and Continental contracts did not become known until the end of August. At this point, the Business Conduct Committee of the Exchange called executives of the three companies, Cargill, Continental and Uhlmann into committee hearings. John Jr. was there and stated that "he was willing to talk in generalities but that he felt that both in September and December of last year . . . he had made a very grievous mistake in making a statement [prematurely] . . . it was not fair for the Committee to grasp the picture piecemeal." John Jr. denied any subterfuge with the two contracts, refused any more information and ended: "They cannot see why they should be coerced as they were last December."

It took the Business Conduct Committee only a few more minutes to rule that the Cargill long position in the September corn futures would have to be amended to include both the Uhlmann and the Continental amounts. On September 1, the combined position became 9,392,000 bushels, 50.8 percent of the total open interest of 18,502,000 bushels. Thus, by September 1, 1937, Cargill's involvement in the expiring corn futures contracts looked even more dominant than in December 1936.[27]

Fighting the "Shorts"

Convinced of a continuing conspiracy by the shorts to drive down prices (in the process obtaining enough cash corn to meet their obligations), Cargill now, in the words of the CEA, "entered upon a campaign of aggressive buying of cash corn." In early September its efforts were concentrated mostly in the Midwest; later, about September 17, the buying campaign was extended to Texas and Oklahoma.

The subsequent CEA case testimony highlighted 70 wires from Cargill offices to field representatives, giving orders about these purchases. Cargill's intent, according to the CEA, was "to keep corn away from Farmers National, Rice, and other supposed shorts." The following wires appeared in the final CEA decision:

> September, 8 1937: "Want to keep the corn from Fanny [Farmers National] so suggest go back up to four over if necessary."
>
> September 9, 1937: "Pls continue taking spot corn and want to pay just enough to take away from Fanny."
>
> September 14, 1937: "On the old corn . . . we want to take it away from Fanny so if have to make out discounts less Pls do so. We want to get the preference over Fanny so do what it takes."
>
> September 16, 1937: "Our St. Louis office advises that Vehon is now out thru central Illinois bidding for Rice on old 2 Yel at 2 over . . . suggest go to 2½ over if have to take this away there."
>
> September 16, 1937: "Crosby offering couple cars old two YC, do think we should sell to some other party and then buy back ourselves, it can be done, otherwise must sell to Rice."
>
> September 21, 1937: "Rice bidding 105¾ for corn overnight we are bidding 106."

Other messages dealt with the Company's efforts to sell their cash corn only to feed companies or processors and to be assured that the corn would not be placed on the market again "so that the shorts might obtain it for delivery" (the CEA's words):

> September 9, 1937: "If the feed men are taking the spot corn let them have it but want to be sure they are the ones taking."
>
> September 16, 1937: "Any of the corn we have billed to CP [Corn Products Company] regardless of where it came from, want to know if they reshipping any of it to Farmers Natl."

The Texas corn was a particular threat to Cargill, as the supply there was rather substantial. The Company assiduously sought out this market, and by September 17 a wire from one of the field personnel, tabulating his purchases, ended with a quotation that became famous in the subsequent case: "If I have overlooked a bushel of corn it is surely out in the forks of the creek." By September 20, John Jr. wired his father: "Looks like the country is about out of cash corn."

The Company's policy in this critical period in early and mid-September was to buy cash corn, then purchase September futures as it sold the cash

corn, which, according to the CEA, "had the effect of causing the shorts in the September corn future to cover in the pit rather than to buy cash corn and make delivery." The CEA continued: "The policy 'tightened' rather than 'loosened' the situation. . . . In times of shortage . . . the price of the future tends to go up to the cash and the aggressive buying of cash by complainant tended to keep the cash at a premium over the future." This then made it "financially inadvisable for a short to buy cash corn and deliver it; it was more profitable for a short to buy in his contract in the pit."

The CEA felt this to be Cargill's underlying strategy: buy up available physical supply, forcing the shorts to remain in the futures market until such time as they were willing to get out by buying their contracts back. If this went beyond expiration, there would have to be a settlement price established with the longs, primarily Cargill. To the degree that the shorts could themselves buy up remaining cash corn, the Cargill tactics could be countered. It always had been possible to entice away considerable farmer-held grain if the price was right. A St. Louis dealer wrote Dan Rice in late August: "Fellows on whom we can rely told us old corn is scarce . . . but it would certainly surprise one how much could come out on any tight situation. We tried to pin them down . . . if there were a squeeze the consensus of opinion is that every elevator up there could pick up at least 10,000 and there are a lot of elevators up there . . . a half million corn on a conservative estimate."

Frank A. Jost, the key assistant to Dan Rice, now was dispatched to the Southwest by airplane (not widely used at that time) to "smoke out" (his term) any possible corn supplies. He was asked at the McDonald Committee hearing about these Rice efforts to buy: "Every time we would try to buy cash corn, Cargill would step in and bid a higher price than we were bidding." Jost was trying to buy corn for as high as 117¼ and yet was being outbid.

Cargill was using a commission house in Texas named Transit Grain & Commission Company, but, Jost reported, they "covered their tracks in Ft. Worth pretty completely." Jost further bemoaned that everywhere he found the dealers reluctant to talk—most "don't want to do anything to hurt their possible future dealings with Cargill."[28]

By September 16, Cargill's share of the total open interest in the September corn futures contract stood at almost 65 percent. The Business Conduct Committee had met the day before and at that time had begun to worry about rye, too. It had been pointed out to the Committee that Cargill "held the same relative position in September rye as in corn." On September 16, John Jr., Grimes and Sayles met with the Committee. The letter that they presented at that time stated: "We have no desire to 'punish' anybody, even short sellers, and we are, therefore, willing to consider any solution of the problem . . . which will not unduly depress the price of corn to the producers generally." John Jr. was cagey about price, saying only that "at any given moment we have a price which we consider the economic price. At certain prices we will dispose of our line." The CEA stated that John Jr. "was reluctant to reveal Cargill's full intention to the entire Committee."

The Business Conduct Committee rejected Cargill's allegation that there was a bear raid. On the contrary, "the Committee finds there is not now, nor has there been, short line or lines in the market even nearly comparable to the combined long line of Cargill, Incorporated, Uhlmann Grain Company and Continental Grain Company." Despite the Committee's seeming nonchalance about the shorts, they did decide, on September 15, to warn the shorts that, under Exchange rules, they faced expulsion if they defaulted. The press now picked up the issue, sensing a "grudge fight" (as a *Journal of Commerce* reporter called it on September 16). The press did seem skeptical of the Business Conduct Committee's real dedication on disciplining the shorts; the *Chicago Daily News* commented on September 18, after the warning became public, "those long of the market expressed the opinion that the shorts were being 'babied.' They cited numerous occasions . . . where gamblers in grain who had guessed wrong had called for help . . . charging manipulation and other unfair practices."

On September 17, the price on the September contract rose sharply, at one point standing at $1.16¾. The closing price was $1.13¼ (the December 1937 corn contract, in contrast, had stayed almost steady, closing at $.63). The Business Conduct Committee convened a special meeting after the market closed that day and soon learned that there were now misgivings in the Uhlmann group. Fred Uhlmann, its president, appeared in person and stated: "Cargill knows that we are very anxious to get out of the mess. I have never been interested in a corner. As hedgers, they have always hurt us. Cargill has promised me that as quickly as he [*sic*] sees his way clear, he will start evening up Uhlmann's line as fast as possible—no matter what Cargill will do. The Board of Trade will not need to worry about me."

Interestingly, Richard Uhlmann, his son, was one of the five members of the Business Conduct Committee who would adjudicate the Uhlmann role. This was too great a potential conflict of interest, and he resigned. Later in that year, the younger Uhlmann wrote Kenneth Templeton of the difficulties of serving on the Committee. "It has been stated that if a person served on this committee and had a personal trade, he might consider himself continually under suspicion. . . . I do not subscribe to that theory." He noted in this letter that three others of the five members had large amounts of wheat hedged "and naturally had some personal interest" but that "none of us has been criticized for having abused the information that has come to us in confidence, and rightly so, because any decent member . . . does not betray a real trust."

Simon Mayer, the Chicago head of Continental (holder of the other

contract with Cargill), was asked to appear at the September 17 meeting, too, but he stood pat: "I am satisfied that Mr. MacMillan made that promise for me. As our futures are liquidated, our cash will be liquidated to the same extent." The Committee also called in Dan Rice, who was quite hostile toward Cargill: "If they persist in going through with their corner, I will get an indictment against everybody that had anything to do with it." When one of the Committee members asked if he had been buying some cash corn, Rice replied: "I've been selling September against it. I started out to buy corn at one over. Cargill bids 1/2 over my bid, so I told them not to buy anymore cash corn today. Yesterday I bought 150 cash corn. They paid 6 over for warehouse receipts, then turned around and sold corn to go to Indianapolis at 3 over."

The following day, September 18, was Saturday. The markets were open a half day on Saturday in those days. Late in the morning, prices on the September contract suddenly broke, falling to $1.04 3/4. The *Wall Street Journal* reported that "confident longs rushed to liquidate their positions influenced by relatively large tenders of the seemingly light supply of the grain." The same article noted that large supplies of corn from Texas "would arrive here early next week."

Cargill interpreted this sudden price break differently. The Company's internal memorandum noted that "around 11.20 a.m. Dr. J. W. T. Duvel, Chief of the Commodity Exchange Administration, talks on the telephone from Washington with CBOT President Templeton. Within a few minutes thereafter, Chicago September corn begins a precipitate drop in price and the 'bottom peg' is quickly reached. . . . This change of circumstances is capable of scandalous interpretation, and political interference in Washington, coupled with 'leakage' of 'confidential' news in Chicago, probably lie at the bottom of these events. Cargill does not do the selling which causes the sensational drop. . . . This selling is probably the work of existing 'shorts.' "

This was just a surmise by John Jr., but a Templeton private memorandum to his fellow directors seemed to corroborate some CEA pressure. Templeton had made careful notes of the conversation and reported that Duvel had said, "We don't like the action of the market and especially today's action. We think the market has gotten out of hand and manipulation is taking place. . . . Outsiders will think you are just running a gambling house. . . . We won't tolerate another run-up in the market such as you had today. . . . Your rules allow you to close the market and fix a price. If you don't take action, you can rest assured that action will be taken for you, if you have another run-up such as you had today."

On the next business day (Monday, September 20), Ed Grimes met with Dr. Duvel at the CEA offices in Washington. As Grimes recalled this meeting, Duvel had told him, "The Secretary, Mr. Wallace, had become interested in the matter and he had had some talks with him on it." (Cargill suspected, but was never able to prove, that Farmers National had mounted a telegraph protest from farmers charging a "squeeze or corner.")

Then the conversation began to center on price. Earlier, Cargill had intimated that the September corn contract justified an optimum price of about $1.30. Incidentally, when this came up in one of the later CEA cases, the Board of Trade lawyer vowed that the price mentioned by Cargill at that time had been $1.40. Now Grimes tested the water again with the $1.30 figure and got an immediate, tart reply: "Forget it." Duvel, however, now found *himself* in a ticklish position, as a presumably independent government administrator not wanting to appear to be dictating price. In his letter to the McDonald committee, Duvel described how he had handled this dilemma:

> He asked me what was the right price. I told him that I was not naming any figure but that I wanted to see the September future liquidated in an orderly manner. I also mentioned that the September future had sold at a high of $1.16 3/4 on September 17, with a low price of 89 3/4 cents made on July 30; that I did not want to see any new high prices in the September future, neither did I want to see any new low prices. In fact, that I did not want to see either the old highs or the old lows reached again before the future expired . . . if September corn went out in orderly fashion I would expect it to go out somewhere between $1.05 and $1.15. Mr. Grimes then asked "About $1.15," and I said "No, I don't mean $1.15, either," but that I would expect to see the September corn liquidated orderly somewhere within a reasonable range without wide daily price fluctuations, and certainly below $1.15, unless fundamental conditions should change materially before the end of the month.[28]

By Wednesday, September 22, corn again rose sharply, closing at $1.12 1/2. During that day, Cargill had sold just 820,000 bushels; its percentage of the open interest had risen to 74.1. After the close, the Business Conduct Committee forcefully communicated its disappointment with Cargill's position that day. Sayles responded that "we had orders in the pit to sell over two and one-half million bushels, but we were unable to dispose of it, as the shorts were not eager to buy."

Sayles then went home, exhausted, only to be summoned back later that evening. Morris R. Glaser, the Business Conduct Committee chairman, called him at 11:00 P.M., insisting that he return downtown to meet with the Committee.

Sayles arrived at the Union League Club about midnight, only to find no one there. After waiting several minutes, he received a call from Glaser—they were at the University Club but had forgotten to tell Sayles. After a cab ride, Sayles finally appeared before the committee.

> Mr. Glaser insisted that I promise to put market selling orders in the pit the next day and said that he would not want to put the words in my mouth to make a promise but that is what they really wanted. I told them that I would have selling

orders in the pit the next day at a price but we were not going to dump our line or any part of it on a declining market, while they allowed the bears continually to offer the market down. . . . Mr. Sturtevant [another member of the Committee] asked me to leave the orders in the pit that were not filled that day. I told him that would be impossible and no one, to my knowledge, did business that way. Every order that was in the pit was a day order and at the opening the next day they would start over again and that was what Cargill intended to do. . . . Mr. Lindley asked me if we did not intend to cooperate with them in this situation. . . . I told him we would keep our promise but we had never promised to cooperate to the extent of selling out our long corn regardless of price. . . . They tried to extract a promise from me to have big orders in the pit to sell September corn at around $1.12½ the next day and I told them that would all depend on what the market did the next day and we would not make any decision until then. . . . Then Mr. English, who had driven downtown and who lives in Evanston, drove me home at about 3:00 A.M.

The Cargill brief reporting this meeting editorialized: "One cannot refrain from thinking that the Business Conduct Committee had a bad case of nerves. . . . Certain it is, however, that they gave Mr. Sayles a very bad time of it, and the results of their 'third degree' methods were peculiarly barren." The brief ended, rather piously, "The shorts were allowed to have a good night's rest; and doubtlessly Mr Sayles felt, around 3.00 or 3.30 A.M., a twinge or two of envy."

The Business Conduct Committee minutes of this evening meeting have also survived intact; these meticulous and vivid notes conflict in some of their major particulars with the Sayles version.

Their meeting had begun at 9:00 P.M., with all Committee members present, as well as Kenneth Templeton, the CBOT president, and Howard Ellis, the chief outside counsel for the Exchange. Ellis clearly was worried about the legal implications of what he thought might be seen as Exchange inaction on the corn contract. Already one Exchange member had queried, "If farmers knew situation, wouldn't B of T be criticized?" Ellis warned: "If the Committee remains silent, Cargill is entitled to presume that liquidation to date is considered satisfactory by the Committee. . . . Wednesday the market went up. Why didn't they liquidate more? You men, as experts, say that they liquidated enough, but before an investigating committee you cannot justify scale liquidation upward. An investigating agency would say that you are letting Cargill take advantage of a squeeze."

This harsh statement galvanized the Committee to call Sayles downtown. The Committee's minutes pictured Sayles as much more compliant and deferential. In answer to Glaser's question, "Will you have an order in, at or near today's closing price?" Sayles was said to reply, "We will have an order in. How does the action suit you? If it is satisfactory to you we will do the same tomorrow; keep on selling on the way up." When Lindley stated, "It would be to the best interests of everybody concerned for you to liquidate regardless of price," Sayles answered, "I agree with you. We'll

liquidate when we can." Lindley pressed for a more specific promise: "If I understand you correctly, you are a seller of corn within the limit of the market to absorb sales, and whether the price is up or down you will be selling." The minutes recorded Sayles as replying, "Yes, we will be a good seller of corn."

At this point, Theodore E. Cunningham summed up: "It seems to me that Mr. Sayles has relieved all of us considerably." Templeton added, "We'll all sleep better." Glaser, still uncertain, asked again, "You are going to be putting in corn at the market tomorrow?" Sayles replied, "We are going to be sellers of corn. We will be liquidating tomorrow." Thus ended the Business Conduct Committee version of the meeting.

The next morning (September 23), Sayles went to the pit with several orders to sell at $1.14⅞. The results were not what he had hoped: "I stood in the pit next to Mr. Sturtevant and watched Mr. Rice continually offer September corn at $1.14¾ and lower but did not see him make any sales." At the end of the day, Sayles was called once more to the offices of the Business Conduct Committee; the members pressed Sayles as to why Cargill had not sold a big portion of its line Sayles answered, "We had orders in the pit to sell several million bushels at a point ⅛¢ above where the bears raided the market."

Once more, Sayles was ordered by the Committee to stay downtown and wait for a call. Summoning him at about 11:00 P.M., the Committee insisted that Cargill liquidate a majority of its line the next day and objected strenuously to the Sayles accusation of an alleged bear raid Sayles replied that Richard Uhlmann had told him that "they considered a raid was when any member stood in the pit and continually offered corn down in big round lots without making sales and offering it down for several cents." Apparently Uhlmann was asked to prefer charges against the Rice group but refused. "There was plenty of proof, everyone in the pit knew about it," Uhlmann stated, "if they wanted to prefer charges they would have no trouble to prove that this pit trader was putting on a bear raid."

The Committee then gave Sayles an ultimatum, insisting that he sign a statement promising to dispose of a majority of Cargill's line the following day. "I refused to do it . . . we could not tell what the market would do the next day. . . . He remarked that prices did not mean anything to the Committee . . . and I told him that price might not mean anything to the Business Conduct Committee but it meant a lot to the Cargill interests. We were not dumping our corn just to satisfy the short sellers."

The following day, September 24, Cargill's net long position had declined by only 9,000 bushels, and the Committee ordered Cargill to bring its position down to 5,400,000 bushels by the close of the business day. John Jr. fired off both a telegram and a letter, each with the same blunt message: "We categorically deny each and every charge of misconduct con-

tained in your letter. We further deny your jurisdiction to tell us when and at what price to cancel our contracts. . . . We have no intention of being coerced by any bear raids."

This finally seemed to galvanize the Exchange to action. Kenneth Templeton, the president of the Exchange, put in a call to Dr. Duvel at the CEA. Templeton's first remembrance of this call when queried about it many months later was that Duvel had said, "I think the market should be closed." Later, Templeton modified this—that Duvel had only asked, "Do you *think* the market should be closed?" (emphasis mine). Whoever said what, the action was definitive: the Business Conduct Committee forthwith ordered trading in September corn futures stopped at the close of that day (September 24) and mandated a settlement price of $1.10½ per bushel.[29]

Uhlmann Bails Out

Early on that pivotal day of September 24, before the decision by the Business Conduct Committee to mandate a settlement price, the executives of Uhlmann Grain Company, having been named with Cargill and Continental in that morning's order by the Committee, insisted to Cargill that it be let out of the agreement.

Ed Grimes elaborated Cargill's explanation for the Uhlmann decision "This . . . was done as a matter of grace, not of right. The Uhlmann Company told Cargill that Mr Fred Uhlmann, a man of advanced age, was in poor health; and said that the mental and physical strain caused by the terrific pressure put upon him by the activities of the Business Conduct Committee was having a very serious effect on him." The Continental executives had made no such representations, for that company had "stood its ground when the Order of the 23rd was issued to it"

The Uhlmann version of this was signally different On the night before (September 23), Fred Uhlmann had met with the Business Conduct Committee and the Committee's minutes quoted him:

> We had orders from Cargill today to sell our whole line. . I called up Cargill yesterday and told him [*sic*] I was in a terrible mess, and said when I made a trade with you I did not know you had previously made a trade with Continental Grain Company and consequently as the Continental Grain Company are the first to receive the corn from the Clearing House, they are the oldest in the Clearing House, they probably got all their corn, probably enough to satisfy them and if it is not sold or there is any disagreement, I will be the victim and I don't like it I am willing to cooperate to any extent . . I could clear myself if I would go to Cargill and say I would not let any dollars and cents stand in my way I want to get out I want to do this straight, make your own terms.

Fred Uhlmann had had enough; the contract with Cargill had blown

up in his face: "As far as I am concerned, I want to go to Europe. I don't want to appear as a guilty party. . . . I want to undo this trade. I have a right to do that. I could go to them and I would not let anything stand in the way."[30]

Cargill Cleans Up the September Contracts

Once the mandated price of $1.10½ had been established, the liquidation of the September corn futures contract proceeded expeditiously. Cargill continued to purchase cash corn, both because it "feared the Business Conduct Committee might prevent its obtaining much needed cash corn" and "because it wished to cooperate with the Committee." During the remainder of the month, Cargill liquidated its long September corn futures as it purchased this cash corn but did worry that it was being stuck with poorer quality in the process, "undesirable mixtures of white and yellow corn and new and old corn"

The price of cash corn, after the September 24 mandating decision, began to drop substantially By early October it was in the neighborhood of 83 cents and later that month dropped as low as 61 cents. Cargill had been paying well over $1.00 for the cash corn it purchased to raise the price of cash corn during September Obviously, in order to effect its overall plan, the Company had been willing to stand a substantial loss on this cash corn—to use the macabre expression common in the industry, to "bury the corpse"

The McDonald Committee, in its later public report, described the Company's strategy:

> Cargill had a short position in December corn futures which exceeded its long position in September corn futures. . Thus, whatever effect Cargill's long September position may have had on September prices, it was offset by Cargill's short position in December corn futures. Cargill's purpose in maintaining such an overwhelming short December position was to enable it (Cargill) to make a speculative profit . . at the close of the September corn futures, at which time it (Cargill) anticipated it would undoubtedly suffer a loss on its stock of cash corn accumulated by it to sustain its September long position. The activities of Cargill in outbidding shorts for cash corn in this and other markets, under all the circumstances, were designed to strengthen Cargill's long position in the September corn futures.

Thus, the view of Cargill's motives held by both the CEA and the CBOT was that the Company was attempting to hold up the price of September corn futures until the termination of the contract, when they estimated it would be in the range of $1.40. The potential profit on this would have been huge; for example, if the Company had averaged $1.10 on its purchases, say, for the 9,372,000 bushels it held on August 31, a $1.40 sale

TABLE 1

	1937-38 Crop year	Five-year average (1932-33 through 1936-37)
Total bushels (all grains)	126,284,000	85,352,000
Spring wheat (bu)	12,542,000	18,807,000
Winter wheat (bu)	27,597,000	5,569,000
Corn (bu)	47,542,000	22,014,000
All other (bu)	38,603,000	38,962,000

would have netted $2,811,600 profit. At no point in the record did Cargill agree that this was the Company's motive, but it does seem reasonable that some scenario close to this likely would have occurred had not the CBOT mandated a settlement price of $1.10½.

Cargill's efforts to profit on the liquidation process of the September contract were, of course, frustrated. With the major loss on cash corn sales—the "corpse had to be buried"—it was now ordained that Cargill was going to incur substantial net losses, as the September and December contracts would liquidate without positive effect.

The total bushels traded by the Company in this crop year June 1, 1937, to May 31, 1938, was strikingly larger than the average of the previous five years, a significant part attributable to the heavy Company buying in September 1937. Table 1 presents the figures for the year and for the previous five-year average.

The full implications of the trades involved in the September 1937, contract were not apparent right away, inasmuch as hedges were rolled over to later months, and the full liquidation of the 1936–1937 old-crop physical corn, to be accomplished over the fall and winter of 1937–1938, would not affect the financial statements until the end of the fiscal year, on May 31, 1938.* In the Company's closing statements at the end of the calendar year 1937, covering a seven-month period of the crop year 1937–1938, the Grains Account on the profit-and-loss statement showed a profit of $120,000 (with the net income for the Company at that point being $426,000). This was illusory, of course, for by the time the fiscal year of the Company had been reached, on May 31, 1938, the Grains Account showed a loss of $1,479,000. Indeed, the loss in the Grains Account for the United States alone was even higher, at $1,763,000. Fortunately, Canadian trading showed a profit. The net loss for the Company as a whole was shown on that closing statement, May 31, 1938, as $998,000; later, accounting revisions put this loss figure as $1,136,000. It was the largest loss that the Company had ever endured—indeed, one of only three loss years in the entire history of the Company (the other two years were 1935–1936 and 1920–1921).

*The Company's ending month for the crop year had been changed to May 31 in 1936.

It would be misleading to blame this huge loss only on the events surrounding the September 1937 corn futures incident. For the country, there was a brief but acute depression that began in August 1937 and extended into 1938. This was a difficult time in general for the grain trade, as for other industries. Nevertheless, the root of the large Company loss reported on May 31, 1938, was the aftereffect of the September 1937 corn contract.

At the point of the mandated settlement in late September, Cargill attempted to forestall any further action by the Business Conduct Committee by planting stories in the press of its unfair treatment: "Irving [Goldsmith, Cargill's outside lawyer] is now loading newspaper boys with information re unfair trial methods of Board of Trade just in case Board of Trade decides to take action. He has pointed out no counsel allowed, no record kept, no appeal, etc. and has drawn analogy with labor board, beside which Board of Trade is a star chamber." Cargill officials truly felt that most of the membership of the Exchange were really on their side; as Sayles put it, "the majority members on floor very indignant because directors took such drastic action and all are in sympathy with Cargill."

But this presumed support proved illusory—the incident was by no means over at this point. A long saga of postcontract events now transpired.[31]

Who Were the Shorts?

Although later Cargill briefs in these cases accused Dan Rice and the Farmers National Grain Corporation of being the culprits behind the bear raid, John Jr. apparently was still unsure just what kind of a "conspiracy" (his word) had taken place. He wrote to a family member: "We are immensely puzzled in our own organization as to the identity of the shorts, who were short about 6,500,000 bushels over and above the supplies of corn which they had for delivery."

John Jr. later alleged that Thomas Howell was bankrolling the shorts (Howell, a well-known speculator, already had been censured by the Secretary of Agriculture for his activity in the July 1931 corn contract and had been barred from trading for two years). In the later CEA case, John Jr. was pressed by the CBOT lawyer to produce evidence on this allegation. John Jr. replied: "We thought, because the amounts were excessive and from an examination of the known figures and the speculative world, of which we had knowledge, that only one person possessed the means, the resources and the capacity, together with the wish to manipulate, and that was Mr. Howell." This was the extent of John Jr.'s "evidence," and Howell's name disappeared from the case.

At the time of his own testimony in the CEA case, John Jr. had composed a long, handwritten private memorandum, mentioning another of his suppositions about the shorts: "Nearly one third of the open short interest in September corn during the time of the big bear raid was allegedly of foreign origin. In fact, one short line amounting to 1/4 of the entire open interest, or 4,500,000 bushels was reported to be of Chinese origin, while another large line was of English origin." Again, however, John Jr. was not able to back up his guesses, and nothing further was heard about this unsubstantiated rumor.

Cargill continued to maintain in the later CEA cases that there *was* a bear raid but never was able definitively to identify a conspiracy among the short sellers. One cannot conclude, however, because Cargill could not prove such a conspiracy, that it did not exist. Indeed, the Cargill evidence (for example, the telegrams noted earlier in this chapter) and the brokers' testimony before the Business Conduct Committee both made such suspicions more than just inferential.[32]

The Business Conduct Committee Pursues Cargill

John MacMillan, Jr., had not expected the Business Conduct Committee to take any additional steps beyond the mandating of the settlement price. On September 29, he wrote a Cargill employee in the Los Angeles office: "It looks very much to me as though stopping trading was the only way the gang could pull themselves out of a hole, particularly when we refused to sell our contracts. We do not anticipate any disciplinary action on the part of the Board, as their hands are certainly not clean."

Once again, John, Jr.'s conviction that Cargill was right led to another miscalculation. Clean hands or not, the Business Conduct Committee *did* choose to act. On October 14, 1937, a three-person committee (the so-called Wood Committee) was constituted to investigate whether Cargill, Continental Grain and Uhlmann Grain had violated the Business Conduct Committee's order on September 24 to reduce its position to 5,400,000 bushels. There seemed little argument in actual fact that Cargill had deliberately refused this order, so this subcommittee came to a preordained conclusion about Cargill. The Committee exonerated Continental and Uhlmann in its report on November 16, 1937.

On October 15, 1937, another committee, the McDonald Committee, was constituted. This was a five-person group, charged by the Business Conduct Committee to perform a wide-ranging investigation of the entire September 1937 corn futures contract. Sayles wrote Grimes the day the McDonald Committee was announced, detailing information about the five people. The chairman, William H. McDonald, "might have been put on the committee to save the scalp of the Businesss Conduct Committee." Another member, Rowland McHenry, "is a rather weak sister and has no love for Cargill . . . he made the remark on the trading floor only a couple of months ago that he would get even with Cargill the first chance he had." A third member, E. T. Maynard, a floor speculator, was close to the Uhlmann group; Sayles could not figure why he was appointed, inasmuch as the Uhlmann group was linked with Cargill. The other two men, according to Sayles, were Daniel Rice supporters—one, Edwin A. Boerner, "would follow Rice's advice in anything that comes up," and the other, E. A. Green, was a "staunch Catholic and one of the Irish Village so he is sure to do anything that Rice and that crowd demand."

Cargill had prepared a substantial brief for the Wood Committee rejecting all of the allegations and denying that the Business Conduct Committee had any jurisdiction over Cargill's cash sales. This was Cargill's only response to Wood and his two colleagues.

The McDonald Committee was another matter altogether, for this group now demanded to "examine Cargill's books." Sayles agreed to a preliminary "audit," but when the time came, Cargill had second thoughts. McDonald, the committee chairman, wired John Jr. on November 23 that he wanted to send auditors to Minneapolis. John Jr. wired back: "Courtesy does not require the corporation to meet demands for information that may be in the nature of a fishing expedition."

Despite John Jr.'s adamancy, the auditor, Earle W. English, was dispatched to Minneapolis. When he arrived, he found John Jr., Julius Hendel, and Ed and Weston Grimes "out of town"—the receptionist did not even know who English was or why he was there. Finally, after cooling his heels in the outer office for a while, Cargill MacMillan did meet "graciously" with him but would share only information on Cargill's Chicago office, not on the parent company. English wired McDonald that the materials he was given "are decidedly inadequate for Committee purposes."

McDonald testily told John Jr. that "the Committee will not concede any limitation on the scope of its examination." John Jr. responded by calling the Cargill board into special session (on December 6, 1937), where it formally voted to "decline to comply with the aforesaid demand of the Board of Directors of the Chicago Board of Trade."[33]

The CEA Considers a "Limits" Regulation

Right in the middle of this tension between Cargill and the two committees, an awkward event intruded. In early November 1937, the CEA decided to hold special hearings about the question of whether it should mandate certain maximum limits on positions that individuals and firms

might take for futures in wheat, corn, oats, barley, rye and flaxseed. There had been a "gentlemen's agreement"—first applied in 1926 against the two speculators Arthur Cutten and Jesse Livermore and then regularized during the time of the Grain Futures Administration in 1932—that everyone trading in futures would keep speculative positions below 5 million bushels. Now the CEA wondered if the time had come to make this a matter of formal CEA regulation.

Cargill was asked if it wished to present testimony at the CEA hearings, a potentially ambiguous situation for the Company inasmuch as its very large position in the September contract was one of the key issues being debated by the McDonald Committee. Nevertheless, the Company decided it had too much at stake not to make its own appearance

Some dozen or more members of the industry, together with Duvel and Mehl of the CEA, testified. C. D. Sturtevant of the Bartlett Frazier Company represented the CBOT and in the process of taking a strong stand against any further limitations made some disparaging remarks about John Jr. Noting that "Cargill is now under investigation for its activities in September corn," he added, "I will not cooperate with Cargill in their attempt to try this alleged violation of the Board of Trade Rules before this tribunal."

To a man, the industry representatives from the various exchanges were intransigently against any form of a limits rule. Cargill, however, saw these hearings as a vehicle to continue its argument with the CBOT. Its brief prepared for these ostensibly unrelated hearings referred right back to the September corn incident: "Cargill does not welcome Government regulation of the Grain Trade; but after contrasting the treatment which it might expect to receive from the Commodity Exchange Administration [*sic*] with the treatment which it had actually received from the Business Conduct Committee of the Board of Trade of the City of Chicago and from the Directors of that institution . . . the Company decided to support the proposal."

This ringing support of the CEA's proposed limits surprised everyone. John Jr. first stated that the early gentlemen's agreement "surely did not cover non-speculative spreading or cash transactions such as Cargill's" and ended, "We repeat we favor fixing of lines because by doing so everyone knows where he stands, and whenever anyone, we repeat *anyone*, tries to undermine that stand, the matter can then be brought into the courts, where recognized rules of law and justice prevail." It was clear from this testimony that John Jr. felt that Cargill would not be affected in any way.

Dr. Duvel pushed him on this at the hearings, asking bluntly, "Is it possible for you to state at this time, Mr. MacMillan, or give us some idea as to your views on the limitation?" John Jr. did not want to be pinned down to a specific limits figure and ducked this by stating that he would send forth a brief from the Company at a later point.

John Jr.'s confrontational testimony was not what his lawyers had wanted him to present. Just a few days before the hearings, Weston B. Grimes, son of Ed Grimes and the in-house Company lawyer handling part of the Corn Case, wired Sayles: "Consensus of opinion here is that it would be unwise to chastise the Board of Trade in the press and otherwise since it is felt here that there is a very good chance that either the Wood Committee or the directors will pass the question of violation of the order over without disciplinary action." John Jr.'s outrage apparently was so strong, however, that he made the decision to testify in the hearings, not only about the narrower issue of the limits but also the behavior of the Business Conduct Committee itself.

In addition, John Jr. asked Sayles to set up an extensive publicity campaign, to be held as a contingency in case the Business Conduct Committee did act: "Please go to the advertising dept. of the *Tribune* and the *News* and explain to them in great detail how we thought of buying advertising in case we parted company with the Board and get quotations on a space in the same place for every day in the year. . . . I think we should start off with a fairly large ad."

Although John Jr. believed he had taken Cargill and other hedgers and spreaders outside the purview of the hearing's concerns, it was evident from the testimony that both the two CEA officials and other witnesses were talking about potential limits on *all* users of the Exchange. When the CEA released its report on these hearings many months later, on June 14, 1938, there were indeed newly mandated limits for everyone. A 2-million-bushel limit was placed on all net long or short positions in all futures combined or in any one future, of any one grain on any one contract market. In the delivery month itself, the limit would be 1 million bushels. Spreads were also constrained: spread positions were permitted up to 3 million bushels, subject to the same 1-million-bushel limit in a current delivery month.

Duvel wrote John Jr. a few days later, restating the CEA's desire to have Cargill differentiate between its hedges and spreads. It was a conciliatory letter, Duvel ending, "You may have some other designation that you prefer to apply to such of your transactions that do not come within bona fide hedges or spreads." John Jr. wrote back his grudging acceptance, but continued, "I wish to point out . . . that such a breakdown is almost meaningless as it can be accomplished in an almost unlimited number of ways." (John Jr. felt strongly that none of Cargill's spreads could be considered speculative.) Not content to let the matter rest there, John Jr. included a rather arrogant addendum: "I have heard various comments, especially in

Chicago, which seem to indicate to me that your office does not fully understand the nature of some of our operations."

While the CEA limitations were not particularly onerous in most situations, they were much more restrictive than Cargill had expected. Indeed, Cargill would have substantially exceeded these limits in both the September and December 1936 incidents and the traumatic September 1937 events.

Some 18 years later, in September 1955, a CBOT symposium on the futures markets was held; John Jr. was invited. To the delight of many people, he presented a sophisticated analytical speech on futures markets in general, complete with specific reference to the September 1937 situation and the subsequent CEA case. By this time, John Jr. had had second thoughts about his one-person support of the CEA on the limits regulations. He stated in this speech: "As a matter of interest, I was the only witness (apart from employees of the federal government), who testified in favor of Regulations restricting the size of speculative lines. . . . My reasons for so doing were totally different from those put forth by the government witnesses; and they arose from the hope that they would restrict (or eliminate) certain practices which . . . were plaguing all of us."

Then he continued: "After 17 years' experience under these restrictions, I am now quite frank in saying that I was wrong. In practice, the limitations have bothered only the honest merchant. I suspect that the manipulator has found ways to evade the restrictions. . . . Limitations on speculative lines have been vastly overrated. . . . These restrictions are having a disastrous result."[34]

Cargill Charges the Chicago Board of Trade

The CEA limits hearings both boosted the morale and heightened the aggressiveness of John Jr. John Peterson counseled caution: "There is now considerable sympathy for our cause but I feel that common advice would be in the direction of amicable settlement, which may be good for business. . . We ought to have a case that can stand up without calling anybody names Avoid compounding the offense. . . . Any story emanating directly or indirectly from us burning up the B of T would be unwise and poor business."

Despite Peterson's admonitions, John Jr. decided to press a formal case against the CBOT. First, he thought of the Federal Trade Commission and wired Weston Grimes on December 9: "Ask Irving [Goldsmith] what he thinks of our . . . alleging Board constitutes conspiracy in restraint of trade. We can cite the Call rule, the Vessel Broker Rule, the Pit Broker Rule and attempt to exercise jurisdiction over actions of members outside City of Chicago. We can also allege attempts in price manipulation in December 1934 wheat and December 1936 wheat as well as in corn." After talking with Goldsmith, Grimes wired back: "We will not demand suspension or revocation of license. . . . A good, broad cease and desist order coupled with new regulations . . . will button the B of T up once and for all." In early January, Cargill officials met with CEA officials in Washington, the final step toward a formal charge before the CEA (rather than the FTC).

Meanwhile, the McDonald Committee had been conducting its hearings during December and into early January. John Jr. was asked to testify and did so, only to reiterate once again his beliefs about the "bear raid." The rest of the Committee's questions he parried with generalities, referring the Committee members to the earlier Cargill brief, submitted to the Business Conduct Committee on September 4.

Fred Uhlmann, testifying a few days later, commented about John Jr.: "He was absolutely sure of the justness of his position . . . he acted all the time as an injured party." Uhlmann alleged that John Jr. had not been straightforward with him: "For one reason or another, he tried to conceal his trades from us." Later, Richard Uhlmann, Fred's son, spoke of the fear that many brokers felt about losing Cargill's business: "Ever since he became a member of the Clearing House, it has surprised me that he has used other brokers so much . . I know the power the man has in giving up houses."[35]

What Was Dr. Duvel Told?

Both J. W. T. Duvel and J. M. Mehl testified at the McDonald Committee hearings. Mehl spoke of that fateful September meeting with John Jr. when the Uhlmann and Continental arrangements were first discussed.

> At the close of that conference Mr. MacMillan said to Dr. Duvel "I wonder if maybe the best thing we can do is exchange our September futures for cash corn." That statement challenged my attention and I recall distinctly that I asked "Well, can you get the cash corn?" to which Mr. MacMillan replied "Yes, I think so." I am sure that I said then . . a complete liquidation of the September contracts held by Cargill. . Nothing was said about the terms of the suggested exchange of cash for futures. . . Uhlmann Grain Company or Continental Grain Company was not mentioned. I did not know, and I am sure that Dr. Duvel did not know until sometime later, that those firms were involved He assumed, as I did, that the contemplated exchange of cash for futures meant an actual exchange.

At the end of his testimony Mehl asked permission to make a further statement and said, "I am a little at a loss to know just why Mr. Grimes . . . should emphasize so strongly his numerous conferences with Dr. Duvel in Washington . . . if Cargill, Incorporated was violating the Commodity Exchange Act or was violating the rules of the Chicago Board of Trade,

nothing that was said in Washington could change the facts. Neither Dr. Duvel nor myself, or anyone in Washington that I know of, is in the business of selling indulgences or giving them away."

The CBOT lawyer responded that Grimes did this so that Cargill could receive "the 'blessing' as Mr. Grimes put it" Mehl then responded: "That expression and others to the effect that everything was fixed up in Washington shocks me. They carry implications that are distasteful to me, and I am sure they will be to Dr. Duvel. . . . If Cargill's operations were of a nature to constitute manipulation, or attempted manipulation, it is idiotic nonsense to say that they had the 'blessings' of the Commodity Exchange Administration."

A few days later, when Duvel wrote the McDonald Committee, he was more equivocal:

> Mr. Grimes . . . indicated that I approved the transactions between Cargill and the Continental Grain Company. . . . While this is not correct, please be assured that in no sense do I question Mr. Grimes' sincerity in making the statement. Mr Grimes . . . apparently reached this conclusion as a result of my conversation with Mr. Fitz [the Chicago supervisor of the CEA] regarding the transactions involving the exchange of futures for cash, during the course of which conversation I am reported as having said to Mr. Fitz, "I don't see anything wrong with that, do you, Fitz?" The quotation is correct. However, this conversation with Mr. Fitz took place shortly after August 11, at which time the exchange of futures for cash was first mentioned by Mr MacMillan. At the time . . . I had no knowledge of any of the parties involved and I do not believe Mr. Fitz had any knowledge thereof.

The McDonald Committee ruling on February 1, 1938, about this incident quoted the testimony of Fred Uhlmann, the president of Uhlmann Grain Company: "He was suspicious of the above mentioned transactions [but] . . . his suspicions were allayed by representations made to him by one Julius Hendel, an employee of Cargill and a non-member of this Exchange, who stated to him, to induce him to enter into the transaction, that 'Washington has been posted about the whole deal and that there were absolutely no objections.' "

Richard F. Uhlmann, Fred's son, said his misgivings had been lulled because Hendel asserted to him that "Washington preferred to have it split up among three or four persons" and that "Edward J. Grimes had handled the whole matter in Washington." The McDonald Committee lawyer editorialized that "the above mentioned arrangements were false in substance and in fact" and had not "in any way altered or palliated Cargill's preponderant position in September 1937 corn futures and cash corn."[36]

Finally, the McDonald Committee completed its taking of testimony and on January 31, 1938, made its report to the board of directors of the CBOT. McDonald told them that the Committee's case was "proved beyond reasonable doubt and to a moral certainty" and concluded, "it is with a feeling of great solemnity that I leave this case in your hands."

The charges themselves were well documented, covering some 16 pages and detailing Cargill actions during and just after the September 1937 contract expiration. The Committee also spelled out in specific terms its beliefs about Cargill's motives in attempting to make a "speculative profit on its short December position." The Uhlmann and Continental contracts were rehashed, and the report concluded with the Committee's judgment that there were "just grounds for suspicion" that Cargill attempted to manipulate prices and had "been guilty of conduct inconsistent with just and equitable principles of trade."

John Peterson, still urging that Cargill be diplomatic and conciliatory, on January 31 wrote Kenneth Templeton, the Exchange president: "We greatly appreciate the cordial spirit of your interest, as well as that of your associates, and I am still hopeful that mutually we can find some moderate and reasonable meeting ground as a solution of the problem in which we are all interested" Subsequently, Peterson and Cargill MacMillan did visit the CBOT offices for what was described by one of the members at that meeting as an effort to "wave the olive branch." Peterson was told at this meeting that Cargill needed to make its peace with the CEA, that the CEA official in charge could not be influenced "from the straight line of duty and integrity, and if it was necessary," that the official "probably would go through 100% and like a good Japanese general who did not like his job, would probably shoot the victim with a smile."

But Peterson's hat-in-hand approach was not John Jr.'s choice. He wrote his brother: "The time for pussy-footing is past." His mother and father were in New York, ready to embark on a South American cruise. Apprised of the MacDonald findings, John Sr. wrote of his "horror and indignation" over the "mockery" of the Committee's deliberations; it was a "conspiracy . . . to drive us out of Chicago by hook or crook." His conclusion was surprisingly combative: "We cannot withdraw under fire. . . . I am going to advocate a fight to the finish . . . even if it should involve their destruction." (John Sr. might not have been as confident in this approach had he been privy to John Jr.'s letter to his brother at this same time, in which John Jr. spoke of his "feeling of despondency.")

The first public clue to Cargill's response came on February 2, when a Company public release began: "In view of the closed social club style in which the affairs of the Chicago Board of Trade have been administered for many years" and then described "our efforts to clean house" at the Exchange. John Jr. suggested to Goldsmith even harsher wording for a press release a few days later, suggesting that the CBOT was "mulcting the trade and the public" to "protect the predatory interests."

On February 10, 1938, Cargill finally took an irrevocable step, one the consequences of which its executives could hardly have anticipated. The

Company now instituted a formal complaint against the CBOT under the Commodity Exchange Act; the case was designated CEA Docket No. 6, destined to be one of the CEA's most famous. Cargill's statement of particulars alleged that the Exchange violated the Act by not requiring notice of at least one business day prior to delivery and "not providing for the prevention of manipulation of prices and . . . permitting its Business Conduct Committee to aid and abet manipulation of prices." In this, Cargill had made the decision to incorporate the September 1936 corn futures events and the December 1936 corn and wheat futures cases, both to accompany the frontal attack on the Exchange for its handling of the September 1937 saga.[37]

Unexpected Complications

The battle was now beginning to have effects elsewhere in the business Cargill MacMillan wrote Irving Goldsmith, of "an annoying repercussion from the McDonald Report"—the Bureau of Internal Revenue was check-

The Minneapolis grain exchange, the "Chamber of Commerce," c. 1942.

Posting prices, Minneapolis grain exchange, c. 1942.

ing Cargill's 1936 return, alleging that the Company's reported hedging loss of $4 million "might be speculative losses" Apparently, according to MacMillan, "the McDonald Report has made this auditor hedging conscious and he is casting around to find out what hedging means." The record does not show whether this Bureau auditor did, indeed, find an answer that satisfied him.

Cargill also was being threatened with lawsuits by other holders of the September corn contract. Many shorts had lost money then, not only from the CBOT-mandated $1.10½ settling price but also as a result of other trades made under speculative assumptions growing out of the case. One grain company executive wrote John Jr.:

> I admire your nerve but I still think you are wrong and wish to know if you will arbitrate a loss caused by the corner on corn during September, 1937. My contention for selling September corn at that time and buying December was that no one would have the nerve to violate the statutes of the United States as well as the rules of the Chicago Board of Trade. As I understand it, at this time, you have not been convicted but that your trial will be March 1st, therefore, we would like to hear from you as to whether you would agree to an arbitration covering contracts on September corn and December corn.

No answer to this letter appears in the record.

CBOT officials earlier had questioned Cargill's financial shape. On February 28, John Peterson replied. He noted that Cargill's audited report of

December 31, 1937, had shown a consolidated working capital "in excess of $7,100,000 and net worth in excess of $9,500,000." Peterson continued: "When you consider such net worth and working capital in comparison with . . . your other members of the Exchange, we do not see that you have any grounds to be unduly disturbed about the working capital of the subsidiary Cargill Grain Company of Illinois." In the process of stating this, however, Peterson had vitiated John Jr.'s earlier refusal to provide figures on Cargill, Incorporated, the parent company (although tendering Cargill Grain Company of Illinois data).[38]

The board of directors of the Exchange now became the hearing tribunal for the charges placed before it by the McDonald Committee. Kenneth Templeton immediately contacted Cargill about an appearance. John Jr. rejected this request, holding that Cargill's charges before the CEA were now pending and that "this alone, without reference to past experience, should make it apparent that your Board of Directors is disqualified to conduct this proposed hearing." The CBOT group continued, however, to meet on the matter almost every day during the first two weeks of March. On March 18, John Jr. wrote his father: "I understand they have traced so far as they could the history of every car of corn we bought from sometime in July until December." John Jr. felt optimistic that the board would eventually drop the matter. The papers had been full of a major scandal involving the president of the New York Stock Exchange, and John Jr. wrote: "It is inconceivable to me that they would risk doing anything in the face of this Richard Whitney scandal" (Whitney, the head of the New York Stock Exchange prominent at the time of the Great Crash, had been indicted in early March 1938 for fraudulent stock dealings).

Expelled!

John MacMillan, Jr.'s conviction that the CBOT would in the end take no action against Cargill proved to be totally wrong. On March 25, 1938, the board of directors of the Exchange voted to expel Cargill from the CBOT (technically, to expel the Cargill Grain Company of Illinois) and also to expel three individuals: John Jr., Ed Grimes and Philip Sayles.

The directors of the Exchange were quite self-congratulatory about their decision. President Templeton wrote to the membership about the "difficult and disagreeable task" and declared that "your Directors have acted fearlessly and without partisanship . . . governed only by the evidence presented to them." There were dissenters among the membership, but Templeton argued that "those who criticized the Board's action against Cargill should remember that every opportunity was given the Cargill interests to appear and offer such testimony and present such rebuttal as they saw fit."

He concluded that "there probably has never been a case in Board of Trade history that has reached so closely to the heart and integrity of the functions of the Exchange as did the Cargill case."

This public bravado masked some serious misgivings on the part of CBOT officials about the ultimate implications of the Cargill decision. One of the officers wrote Howard Ellis, the chief CBOT lawyer, on March 10, 1938, about a conversation with J. M. Mehl, the assistant director of the CEA: "Mehl is quite disturbed for fear that Cargill will do everything within their power to regulate futures trading before they get through. Just what they will do, he, of course, does not know." He then added a bombshell: "He [Mehl] is considering filing a complaint against Cargill." The letter ended: "I think you can definitely assume that the Commodity Exchange Administration will do everything in its power to aid you, although I expect Duvel would take the first avenue of escape which presented itself, irrespective of who got hurt by his so doing."

Cargill's public utterances on the expulsion were equally sanctimonious. The Company's news release, on March 28, began with a direct quote from John Jr., to the effect that "the Chicago Board of Trade has completed the trial of the Chicago Board of Trade and has found itself not guilty." The news release castigated the "private hearings behind closed doors" and charged that the Exchange was "attempting to dodge responsibility for the 'bear' raids it permitted and aided during July, August and September 1937." The upcoming CEA case that Cargill had brought was noted and was given as the reason Cargill had refused to testify in the Exchange hearings. The release ended: "We expect to carry on our business as usual notwithstanding the fact we have been arbitrarily deprived."

Privately, however, John Jr. and his colleagues were troubled. Most threatening was the potential effect on Cargill's bank credit. John Peterson immediately was dispatched to New York to soothe any concerns. John Jr. wrote him on March 28: "Father suggests that when you call on the banks that we do not treat the matter lightly, which of course I agree with him, but I am nevertheless of the opinion that this development is constructive, will seriously prejudice the Board's case in Washington, and will mean important earnings for ourselves for the future. I think you are warranted in taking an optimistic view of our earnings prospects."

A few days later, John Jr. reported to his father about Peterson's efforts: "He said he had talked at length with Hugo [Hugo Scheuermann, the Chase National Bank executive] on the phone from Washington and that Hugo was in nowise disturbed by our expulsion. John certainly was not disturbed and said that our balance sheet is what is going to control our credit, which is precisely the view I take." Nevertheless, John Jr. noted to Peterson that John Sr. continued to "caution me on the possibility of

malicious attacks on our credit and I think he is undoubtedly correct for, as you know, in the past expulsion or suspension from the Board of Trade has been tantamount to a death sentence for the ordinary grain man."

Concerns about Supply

The other internal fear was whether Cargill could maintain its ready access to the purchasing and marketing of grain. Had Cargill given up its best avenue for obtaining its supply of grain? To almost everyone's surprise, both in the Company and in the grain trade generally, this proved to be no problem. Cargill immediately began buying grain out in the country with the help of a number of regional grain companies (like Stotler Grain Company, of Champaign, Illinois) and also began trading in a major way on other exchanges. "Julius had an immense amount of fun today," John Jr. wrote Peterson, "in re-establishing future trading in corn in Minneapolis. If we are successful, it will save us quite a little in commissions." (Later, Cargill got into further trouble with the CEA over the methods used in these 1938 Minneapolis corn futures trades.)

There appeared to be a widespread sympathy out in the field toward the Cargill position and a practical willingness to deal with a long-standing large buyer. The Company had had a practice for years of buying substantial quantities of its Chicago grain through other commission houses, particularly cash grain, and had always paid commissions, usually gaining some reciprocity so that something was saved from the full commission. Now, working directly in the field, the Company was not only saving much of these commission costs but having ready, even closer access to the sellers of grain.

The reasons for this saving lay in the CBOT's "Call Rule," a device originally established by the Exchange in 1906 and subsequently validated in a famous U.S. Supreme Court case in 1918 (with Justice Louis D. Brandeis writing the opinion). It prohibited Exchange members from purchasing "to arrive" grain (i.e., grain out in the field or on its way to the Exchange) at any price different from that of the closing price of grain traded on the Exchange that day (at "the call"). Full commissions also applied. In effect, it was a Court-approved mechanism for constraining competition, thereby protecting the Exchange members from price-cutting out in the field while preserving their commissions.

The *Chicago Daily News*, writing at this time about Cargill's new inroads in country buying, described its effects:

> As the result of a 'clothesline squabble' . . . the Board of Trade lost its temper with Cargill . . . and expelled it from membership. Cargill went on buying grain, and has been bidding 1/8 to 1/4 above the closing quotations on the Board of Trade . . . Since in the interest of orderly trading, fair compeititon, etc., the members of the Board of Trade are barred from going out into the country and bidding more for grain than they were willing to pay on the floor . . . all Cargill has to do is to look at the last quotation, raise the ante—and take the pot. One can understand why the Board of Trade members are not pleased.

Even this was not the whole story; the newspaper continued: "But this means in turn that, day by day, country grain elevators have been getting more for their grain than the published quotations, and indirectly it means that the farmers have also tended to get more for their grain. Since this seems to be the chief purpose of a large and lusty government agency, it would be rather difficult to keep the development from being mentioned in farmer conversation, or in political oratory. Without meeting itself coming back, the CEA would find it hard to oppose Cargill." It seemed that Cargill's undercutting of the Call Rule benefited everyone but the CBOT members!

The new efforts posed a challenge to the transportation people in the Company. It was not only that Cargill would use the Chicago futures market less often, but the Company also would be bypassing Chicago on substantial amounts of actual grain shipped. By March 30, just three days after the precipitate Exchange action, a Cargill staff employee had plotted on his hand-drawn map of the East and the Midwest the new routes that this grain would take. For grain coming from the Southwest, Milwaukee and Green Bay would be used more heavily, as well as Cincinnati, as a gathering point for shipment on to Toledo and the Lakes. Some of these new routes could be used as cheaply or even more cheaply than the previously existing focal use of Chicago. It took a while, however, for most of these ideas to become practicable—the established routes (and their intricate rate structures) were far too institutionalized.

The expulsion caught the public interest. Not only were the business pages full of comments on the Exchange's dramatic step, but the national press picked it up. *Time* magazine had a two-page article on it on April 4, complete with a large and somewhat unflattering picture of John Jr. Entitled "Gentlemen's Disagreement," the article cast the event as "only the first round of the best knock down & dragout speculator's battle that has taken place behind the U.S. farmer's barn in many a harvest moon." *Time* characterized the Exchange as "an exclusive club with a divine right not only to deal in grain but also to speculate in it." The "limits" issue was described at some length, with Cargill's sole advocacy of the CEA limitation due at least in part to "the strict Scotch Presbyterianism of its bosses." The difficulties that Cargill and Farmers National had had in gaining membership were mentioned as a prelude to the story about Farmers National besting Cargill the previous July (1936): "Cargill then held the long interest

John MacMillan, Jr., in a TIME *magazine photograph, April 4, 1938.*

in corn and Farmers the short, but at the last minute Farmers dumped 500,000 bu. of previously invisible corn on the market, gave Cargill a real trimming as the price fell 27¢. Last September Cargill got even." Noting that in the September 1937 corn contract Cargill had bought "almost twice as much as there was available," *Time* described the "mad forage for corn by shorts." When the Board of Trade stepped in and "told Cargill to sell 1,000,000 bu. in four hours," John Jr. termed the action "confiscation of the worst order." When Cargill had refused to bring its holdings down, and the Board of Trade had mandated a settlement price, the *Time* writer noted that Cargill had refused to make any defense before the McDonald Committee, and had "since maintained a wounded silence in its head offices in Minneapolis." The article ended with a Weston Grimes quote, in which *Time* characterized him as having "sniffed" that "it is not surprising that a committee of our competitors should find our purchases of September corn to be offensive."[39]

In the process, of course, *Time* had put Cargill on the national map.

Challenge to the "Call Rule"

Cargill's effort to buy grains out in the field, an instantaneous success, had a snowballing effect on the whole grain trading scene. John Jr. wrote

his father on April 1: "The boys are all talking about our having got rid of our . . . hoodoo," and he added, a few days later:

> It is very clear that our heavy buying of cash corn, which we are purposely pushing, has gotten under the skin of the receivers in Chicago. . . . There is a rumor this morning in Chicago that the Directors are considering some way of inviting us back. It is my personal belief that the larger commission houses like Lamson and Bennett will have to abolish half of their offices unless the Board makes peace with us. . . . Their volume of future trading has fallen to about 40% of normal. . . . It has been their cash receiving business which has been carrying them. . . . If the Call Rule is out, this cash business is gone. If the Call Rule is not out, it is also gone because we will do the business.

John Jr. noted Cargill's evolving strategy: "We will naturally move heaven and earth to keep on buying heavily, and I anticipate no trouble in keeping sufficient sales ahead. The only limit will be the handling capacity of Milwaukee and Chicago."

On April 1, 1938, the press headlined a new development—the directors of the CBOT, in a special meeting, had suddenly reversed their position in regard to Cargill and announced that they had voided the Cargill expulsion order. An invitation to Cargill and its three ousted officials was forwarded immediately by the president, Kenneth Templeton. One of the Chicago papers noted: "Traders were at a loss to understand this unexpected turn in events. . . . Among the guesses suggested by astounded grain merchants was that the Board feared loss of importance to its corn trade, which Cargill hoped to shift to Minneapolis."

Cargill rejected the overture, refusing to return, and the attrition of the Exchange business continued. By early June, there were pressures on the board of directors from its own membership to eliminate the Call Rule. Petitions to rescind came forward, and an election was ordered for July 7. Over the several weeks before the vote, there was intensive lobbying on the part of both those wishing to do away with the rule (the elevator operators and some of the individual members) and those wanting to retain it (the commission houses and many individual pit traders). Sayles reported to Grimes that he thought the rule would be "kicked out," that "the receivers . . . will win out by at least 7 to 5." Sayles wired John Jr. on the same day "sentiment swinging back to receivers—[the rule] will be beaten better than two to one."

Once more, Cargill's assessment was not accurate. When the totals were tabulated, the vote was 513 to retain the Call Rule and only 190 against. The matter was, after all, rather academic for Cargill, for it was going to continue buying out in the field one way or the other—paying slightly below the Exchange members' total price (this latter, of course, heightened by their commission). The Call Rule, however, had withstood the challenge, at least for the time being.[40]

Farmers National Goes Under

The fallout from the September 1937 events not only adversely affected the longs (Cargill especially) but had also had a sharp effect on many of the shorts. In particular, Farmers National had sustained substantial losses, even with the Board of Trade's mandated settlement figure of $1.10½, for its short sales were considerably below that settlement amount. *Time* magazine's story, back in its issue of October 4, 1937, talked of the "corn corner" but did not mention any of the longs (even Cargill) by name. Rather, the article focused particularly on Farmers National. *Time*'s story continued: "Farmers National Grain Corp., leading U.S. grain co-operative and a leading short, formally complained to the Commodity Exchange Administration, charging 'major manipulation.' C.E.A. Chief J. W. T. Duvel, cracked back with a stinging rebuke: 'Every time there is a price rise or fall there is an outcry from those who lose money.' " It is not clear how *Time* obtained this quotation from Duvel, but the embarrassment to Farmers National was substantial.

This was a particularly bad time for Farmers National to take such a financial bump. The big cooperative conglomerate (it was then the holding entity for 10 regional cooperatives in the Midwest and West) had been in existence for eight years, helped at every stage by the federal government but, as a later *Time* article stated, "has always been sickly." It had sold a great deal of grain in 1937 (*Time* gave a figure of 66 million bushels), but its only profitable year came in 1931, when it had a privileged arrangement with the Grain Stabilization Corporation. There had even been an investigation of Farmers National by the United States Senate. Inklings of financial trouble had already surfaced prior to the September 1937 incidents. Now the cooperative's losses in the corn debacle brought its board of directors to the point in early February 1938, where a decision was made to dissolve the central organization (the regional cooperatives would continue on their own). At least one of John Jr.'s antagonists in the ongoing legal battles would not be around to castigate him.[41]

Corn Case Skirmishes

Cargill's complaint against the CBOT under the Commodity Exchange Act, filed on February 10, 1938, as CEA Docket No. 6, now began its convoluted movement through the agency's process. The final arbiters in the case would be the Commodity Exchange Commission, a three-person tribunal composed of the Secretary of Agriculture, the Secretary of Commerce and the Attorney General of the United States (at that time, respectively, Henry A. Wallace, Daniel C. Roper and Homer S. Cummings).

The CBOT had entered a motion to quash the entire Cargill matter, and on May 10, 1938, the Commission met to hear the preliminary arguments. By this time, Cargill had its own brief in final form, and John Sr. wanted badly to get it into the hands of Secretary Roper before Cargill's testimony was given. Apparently John Sr. had some intimation that Roper would be sympathetic. Through the ministrations of John Sr.'s relative by marriage, Morris Barker ("Aunt Maggie" Barker's son), Judge J. Harry Covington, the head of a famous law firm in Washington, agreed personally to approach Roper. Successful in the assignment, Covington reported back to Barker on Roper's words: "I know a good deal about this firm, Cargill, Incorporated. They are a very reputable, high grade firm dealing in grain commodities and are world-wide in their operations. I sat personally on the hearings in this case and I am of the opinion that if the rules of the Department of Agriculture can be used to discriminate against a firm like Cargill, Incorporated, then the Secretary of Agriculture ought to change the rules." The Roper comments, surprisingly critical of Wallace, were only passed along secondhand. Nevertheless, they encouraged John Jr. and his colleagues.[42]

On September 27, 1938, the three-man tribunal ruled against the CBOT effort to quash Cargill's case. A hearing was set for November 28 in Washington, D.C., to be chaired by a referee, S. Abbot Maginnis, appointed for this purpose by the Commission.

After the opening two days, John Jr. was put on the stand. In preparation, John Jr. had written out in longhand 53 pages of notes, to which he planned to refer as he testified. This manuscript, fortunately preserved, is a unique amalgam of facts and opinions, the latter most revealing of John Jr.'s personal prejudices and precepts about both the case itself and grain trading in general. He pictured the case in apocalyptic terms—"as dramatic a struggle as can be . . . it is entirely possible that it may mark the end of futures trading in grain and cotton, and possibly mark the end of the private system of distribution. . . . One thing is increasingly evident, that it is a struggle to the death . . . one or the other [Cargill or the Exchange] must go. Compromise seems impossible." Cargill, on the one side "is a relatively small and obscure firm when contrasted with such giants . . . as General Mills, Corn Products, Quaker Oats, Louis Dreyfus and Co. and Standard Brands." Cargill's management "has been hard working, conscientious, and above all, thrifty." The family "are Scotch Presbyterians" and had always been looked upon as "builders, as being constructive to a fault"; their "integrity has never been questioned," and while "it cannot be said that the family lack courage . . . yet they certainly never speculate." The Company "has shunned publicity and tended to its knitting."

On the other hand, the CBOT's history had been "replete with drama, sometimes lurid . . . the public has always heard of its corners and squeezes, and many an individual has used its facilities for a flutter in wheat

Testing for grade in Cargill's sample room, Minneapolis grain exchange, c. 1942.

or corn." The Business Conduct Committee had been given the power by Exchange members "to do everything but beget children." The Committee, protecting the shorts in the Cargill case, had issued an order "compelling Cargill to sell regardless of price," despite "countless complaints from farmers." The Exchange "has been engaged in manipulating prices downward . . . favoring short sellers and bear raiders . . . at the expense of the producer and the distributor."

This set of arguments was now laid before Maginnis, who from time to time pushed John Jr. to cut short some of his editorializing. Nevertheless, John Jr. was optimistic about Cargill's initial arguments, telegraphing his father on November 29: "We are getting all the breaks. Atmosphere of Department and referee most sympathetic." John Jr.'s testimony had made all of the national papers; John Sr. exultingly wrote Ted Young, on December 2, that "we finally made the front page of the *Wall Street Journal*, too."

Each day, full reports on John Jr.'s testimony were sent back to his father, who responded at several points with corrections of some of John Jr.'s statements. Ted Young reported back to Minneapolis that John Jr. was "particularly effective" and that "we gave the Chicago Board of Trade a real bust in the nose." Young wrote John Sr., a few days later, after John Jr. had been on the stand for about a week, still under direct examination by the Cargill lawyers, that "Jr. is making a fine witness, and it is a great pleasure to listen to him on the stand. . . . He explains things very clearly and makes the story interesting."

A barley buyer explains grading to members of a Cargill training class, c. 1954.

John Sr. seemed uneasy, however: "Of course I am delighted that Jr. is making a good witness, but I'm afraid he is under a pretty heavy strain, which must be tiring him badly." He was even more frank in a letter to Ed Grimes: "So far as I know the case has been going along very well, but Jr. is not in good shape and I am just fearful that he may not be able to stand up under such a long, constant strain—so it will be a great relief to me to know that you will be there to carry on." John Sr.'s remembrances of John Jr.'s nervousness in the Company's "banking crisis" in early 1933, and the earlier incidents in the period after 1920, when John Jr. was sent to the lumber camp in British Colombia, still must have been vivid.

Finally, the time came for the CBOT cross-examination. Howard Ellis, the Exchange lawyer, had already set a confrontational mode in his earlier challenges of some of John Jr.'s statements. Early on, John Jr. had shown his antipathy toward the Chicago exchange: "I also wish to place myself on record as saying that I do not wish any of the statements that I may make here or that any of my associates might make, or that our side might make, to reflect in any way on futures trading as conducted in the outside grain exchanges. By 'outside exchanges,' I refer to grain exchanges other than Chicago." At the point in John Jr.'s testimony on Cargill's first entry into Chicago, he had averred that "we opened the office with fear and trepidation." Maginnis, the referee, immediately responded: "I would suggest now, Mr. Grimes [Weston Grimes], that you warn Mr. MacMillan about the use of such opinions as 'fear and trepidation.' " Howard Ellis

picked up this skepticism on the part of Maginnis, and a few hours later made a strong rejoinder against what he called Cargill's "constant slurs."

By December 13, John Jr. began to worry that the proceedings were not going to his liking; he telegraphed his father: "Hearings only moderately satisfactory and proceeding so slowly." His father immediately responded: "I take it that it must mean a lot of sharp passages between the opposing counsel and that you have been getting the worst of the Referee's decisions." In another telegram at about the same time, John Jr. told his father, "Ted is here smorning. Says we got very ruff treatment yesterday. Both him and Covington think the cards are stacked against us."

The most revealing exchanges between Ellis and John Jr. involved the distinctions between hedging, spreading and speculation, and the definition of a "corner." John Jr. first drew a distinction between "logical" hedging and "illogical" hedging; the former was a purchase in the same grain or a cross hedge in a related grain, where the effect on price would be minor, whereas illogical hedging was "a case where the purchase of the inventory bears little or no relation to the hedge." In the latter case, there might be a tendency to "move the price of a future in the direction in which the sale is being made." Ellis then pushed John Jr. to define the September 1937 hedges in these terms, but John Jr. answered that it depended "entirely on the purpose—the connection in which it is used. It may be thoroughly logical under one set of circumstances and thoroughly illogical under another set of circumstances. No categorical answer can be given to the question."

There were also lengthy interchanges between the two men on the distinction between a "squeeze" and a "corner." A squeeze, according to Ellis, was a situation where there was "no intention to acquire a monopolistic control . . . the high price may come about without there being any such intention and there may be little or no desire to exploit the situation when it transpires that there is a shortage of grain." The corner, on the other hand, was a deliberate attempt to use a monopoly position to extract profits.

John Jr., in responding to the Ellis definitions, edged the conversation toward blaming the shorts: "Where the shorts have neglected to move supplies into deliverable position, I have seen many situations which I would define as squeezes, but I have yet to see a single situation which I consider a true corner, certainly in the American grain trade." A few moments later, John Jr. further attacked the shorts: "The trade is very properly open to criticism on that score, but the corrective measure in my opinion, is to have short sellers understand they may be called upon to perform. In my opinion, the greater frequency of this type of disturbance in the United States markets in recent years has been almost exclusively due to this philosophy that a short has an unqualified right to cancel his contract by offset

rather than by performance." Despite John Jr.'s efforts, by the time he was excused from the stand on December 19 the insinuation that there had been a Cargill corner had been planted firmly by Ellis.[43]

The CEA Accuses

There was to be no rest in the Christmas recess. To the absolute shock of all of the Cargill group, on December 22, 1938, the Commodity Exchange Authority, acting for Secretary of Agriculture Wallace as complainant, brought charges in a completely separate CEA complaint (subsequently CEA Docket No. 11), alleging that Cargill as a company and John Jr., Ed Grimes, Julius Hendel and Philip Sayles had manipulated the price of the September 1937 and December 1937 corn futures and had also engaged in fictitious sales of corn futures on the Minneapolis Chamber of Commerce toward the end of March 1938. The four men had engaged "in a conspiracy with each other and with others" to do this, and not only had they conspired to manipulate price but they had "made, and caused to be made, fictitious and washed sales in corn futures on the Minneapolis Chamber of Commerce, thereby causing to be reported a volume of trading greatly in excess of the volume of actual bona fide transactions. . . . Cargill, Inc., was both buyer and seller."

It was a shocking development. The implacable tenor of the CEA charge took John Jr. and his colleagues aback, particularly because the Dow Jones ticker tape story ended with an ominous sentence: "Specifically, the order said the respondent will be required to show cause why an order should not be made directing that all contract markets until further notice of the Sec. of Agriculture refuse all trade privileges and suspending or revoking the registrations as futures commission merchants of the corporate respondents." Sayles telexed Ed Grimes on the day of the announcement (December 27, 1938): "Jack Wheeler says everyone on floor think Cargill are through—isn't that funny."

If, indeed, the Exchange was exulting publicly, its private views (as expressed in records of the board of directors) were considerably more subdued. The Exchange long had held a latent fear of the CEA, despite apparently now being on the "right" side in the Cargill matter. At the December 1937 "limits" hearings with the CEA, the Exchange had stonewalled against any of the CEA's proposed charges (which were passed nevertheless). At that time, an Exchange lawyer had written, in a private memorandum to a colleague: "It looks to me as if the CEA was attempting to put the Chicago Board of Trade behind the 8-ball." CEA action against Cargill still seemed potentially able to enmesh the CBOT, too.

The press reported the second case in banner headlines, but many of the writers implied a "pox on both houses." The *Chicago Daily News* of

December 28 called the case "sensational news to the grain trade," noted the "social club" allegation against the Exchange and called the latter "complacent," a "sort of monastic organization, cloistered behind the walls." With some irony, the writer continued: "the members . . . deal with each other on terms of absolute good faith . . . with such invariable integrity that they tend to be even a little gullible when they go outside the trading floor to take the chances of trickery in ordinary business."

What particularly upset the Exchange leaders was part of the headline itself: "Integrity of Templeton is Outstanding Part of Case." Templeton was the president of the CBOT—it seemed that in the process of Cargill being called to account, so too was the Exchange. Pencilled at the top of a copy of the article in Fred Clutton's file (he was secretary of the Exchange) was a comment from a colleague: "I do not like this article."[44]

The testimony on the case resumed once more on January 3, 1939, with John Jr. scheduled to be on the stand again. However, Irving Goldsmith, the trial lawyer for the Company, had been taken ill, and Ted Young took over. He chose to put Hayes H. Miller, a member of Cargill's Administrative Division, on the stand. Young wrote John Sr. on January 7 that Miller had "taken the brunt of Ellis' cross-examination and so-called 'smart tricks.' "

At the top of Cargill's agenda at this moment was its desire to separate the two cases—their case against the Exchange and the CEA's case against Cargill (Docket No. 11). The Company wanted to keep its case single-mindedly attacking the Exchange. As Young put it, in a letter to John Sr., if the cases could be separated, "we won't have Ellis on our necks in that proceeding—only the 2nd-rate lawyers in the Dept. of Agriculture. A consolidation of [the two cases] would have meant Ellis *plus* these other 'legal lights.' "

To the relief of Cargill, Referee Maginnis ruled that the two cases were separable; later, the CEA was granted an indefinite postponement of its own case until the Cargill case against the Exchange was completed. The hearings in the latter continued for some 10 days, with John Jr. once again on the stand, much of the time subject to cross-examination.[45]

On January 16, Kenneth S. Templeton, immediate past president of the CBOT, made a striking public statement, one that appeared on the Dow Jones ticker tape and was subsequently disseminated widely through the public press. The tape stated: "In his review of the Cargill matter, Mr. Templeton declared there probably has never been a case in Board of Trade history that has reached so closely to the heart and integrity of the functions of the Exchange. The unfortunate circumstances which resulted in the expulsion . . . have certainly not been constructive insofar as the welfare of the grain trade as a whole is concerned." Templeton was also quoted as saying that "offers of compromise were made to your officials" [the CBOT leadership] but that these had been refused by the Exchange "because they did not reach the fundamentals involved." The fact that the Secretary of Agriculture had just preferred charges against Cargill "must give us all courage to renew our faith and belief in the essential soundness of our policy of self-government."

Templeton then had alluded to "adverse" statements to the public by Cargill, alleging that the case itself was "an attempt to confuse the public and to interject new issues into the picture." He had concluded the statement ominously: "If the charges filed by the Secretary of Agriculture against the Cargill interests are sustained and Cargill is unable to hedge its inventories in any of the contract markets of the United States then perhaps Cargill will not be able to cut commissions on country business in such a way as to make unfair competition for our members." Obviously, the Exchange members continued to resent the lack of "Call Rule" control over Cargill's purchases.

The Cargill group, upset by this public attack, wondered how to retaliate. John Peterson advocated caution: "I do not exactly see how these short jabs are getting us anywhere . . . every time any publicity is made now, the papers recite the fact that we were kicked off the Chicago Board of Trade and that now the Secretary of Agriculture has made out a complaint against us. . . . My own reaction is to let the thing temporarily slip until we get some more real juicy scandal on the Board of Trade . . . with colorful revelations of the workings of the Board of Trade, and shoot such a story."

A Mistake in the Crop Bulletin

John Jr. received this letter but did not take Peterson's advice. Instead, he decided to respond in kind, using the *Cargill Crop Bulletin* as his vehicle. The *Bulletin* had become a major farm publication, with circulation of many thousands among farmers all over the country. They looked forward to the handout; it had detailed summaries of world and national crop conditions and specific coverage of crop and livestock situations all over the country. Along with the agricultural statistics were broader articles on national and world agriculture. John Jr. decided to use this respected periodical to state his views of "the trial of the Board of Trade of the City of Chicago."

The idea for the *Crop Bulletin* article had been supported strongly by John Sr. at the start, but when he saw John Jr.'s text, he was disturbed by its cast. Some of it was quite antagonistic, and John Sr. wrote back to John Jr., "Bert Egermayer and John Peterson both believe that it might perhaps injure our standing in Washington and think it a doubtful wisdom to publish it." It did not occur to either John Sr. or John Jr. that publishing

such self-serving material also might compromise the integrity and independence of the *Bulletin*, built up so carefully over the previous decade. Nevertheless, John Jr. insisted that there be no change, and his original draft became the final wording.

The article, appearing in early February 1939, spoke of how the shorts depressed the price "at a cost of many millions of dollars to farmers and a severe loss to distributors" and contained a special "message to our subscribers" over John Sr.'s signature, stating that "one friendly competitor compared Cargill's action to a case of 'burning down the barn in order to kill a few rats,' " and continued: "Cargill was and is very mindful of this hazard but is of the opinion that dishonest future trading is not of economic or social usefulness, and if future trading cannot be continued on an honest and proper basis that it would be better to abolish it entirely."

Not content to let it stand at this, the article continued with a several-sentence discussion of the alleged conversation between CEA chief J. W. T. Duvel and Templeton on the critical day in September 1937 when prices had dropped precipitously. The call had been made, of course, as the private CBOT records showed, but Cargill could not prove it. It had remained a hearsay story, although one that manifestly was embarrassing to the CEA and to Duvel. Ed Grimes, in his CEA testimony at this time, also had mentioned the Duvel telephone call. With this information in the record, Cargill decided not to call Duvel or Mehl as Company witnesses. Howard Ellis objected, for he desired their personal testimony, and Referee Maginnis remonstrated that both Duvel and Mehl wanted to testify on the matter. Maginnis also asked "if we were trying to make the CEA a defendant in this hearing."

The Exchange lawyers bided their time on the *Crop Bulletin* article until finishing their cross-examination of John Jr. Then, on March 2, Howard Ellis, the Exchange's trial lawyer, made a motion to the referee that Cargill be reprimanded for the article. Cargill countered that the Exchange should itself be reprimanded for its own publicity.

The Ellis side of the argument fell on receptive ears. Maginnis responded that the Board of Trade publicity that he had seen to that point did not seem prejudicial; rather, as Hayes Miller reported to John Sr., "he said that the evidence did not warrant our summation of the 'phone call between Duvel and Templeton and the resulting price break. He said that this casts a reflection on Duvel's integrity and was not fair."

The Cargill lawyers, realizing their tactical error, replied that "had Cargill known the Referee would disapprove they never would have written that article." Maginnis lectured both parties that it was never proper to try their cases in the papers. But even this statement was widely reported in the press. That day, for example, the *Chicago Daily News* headlined its column-long article: "Maginnis Orders Attorneys in Cargill Case to Stop Propaganda." The article added further color about that day's proceedings: "On one side is Howard Ellis, attorney for the Board of Trade, belligerent and forceful, occasionally sarcastic at the expense of a witness. Near him is dignified Fred Clutton, Secretary of the Board of Trade. . . . Across the table is F. W. Sullivan, at the moment spokesman for Cargill, and his fellow attorney, the alert, freckle-faced and luminously intelligent Irving B. Goldsmith. In the background, and for once not in the witness chair, John H. MacMillan, Jr., president of Cargill, smiles benignantly at the proceedings."

The *Daily News* writer continued: "We have said before, and will say again, that Kenneth S. Templeton, then president of the Board of Trade, acted from the highest and most honorable motives throughout. . . . On the other hand, MacMillan also impresses us as a very honorable businessman, who is obviously honest and straightforward and who wouldn't take an unethical step for any amount of money. He is just an ordinary citizen, looking very much like a grocer, or any other type of substantial small businessman."

Another forum that both parties assiduously cultivated was that of Congress itself. Back on February 2, Weston Grimes wired John Jr. that the case had been discussed in the House of Representatives that afternoon, with "speculative short selling . . . condemned." Goldsmith pushed hard for these speeches in Congress, especially wanting some in the Senate, and John Jr. wrote Weston Grimes: "Irving is wild over our lack of speeches in Congress, and especially in the Senate, so for heaven's sake do all you can along this line, although I am not altogether in sympathy with some of the steps he wants taken to bring about such speeches."[46]

John Jr. then wrote Goldsmith: "Both Weston and his father assured me that they had to promise secrecy to their friends in the House, but Ed assured me that I would be completely satisfied. . . . I am also suggesting to him that he try to make use of the Republican Publicity Department and I am inclined to think that can be arranged for." John Jr. spelled out his own thinking in a letter to Weston Grimes: that the latter approach "the Republican Publicity men . . . to arrange a daily press release linking up Secretary Wallace with the Board of Trade."[47]

As the hearings continued through February 1939, the third month of the testimony, John Jr. felt more optimistic about Cargill's case. He wrote to his father, on February 17: "In Chicago I learned a great deal about the precarious condition of the Board of Trade, financially speaking. . . . All these so-called 'mergers' of course mean nothing but the retirement of these people from business, and I was informed . . . that unless something was done within the next 30 days that the whole Board would collapse like a deck of cards." He continued: "I have a decided feeling that a proposition of some kind will be made to us within the next two weeks to a month.